

The American Bar Association Journal

ISSUED QUARTERLY

BY THE AMERICAN BAR ASSOCIATION

CONTENTS

I. <i>List of Officers, 1918-1919</i>	535
II. <i>List of General Council</i>	536
III. <i>List of Vice-Presidents and Local Councils</i>	538
IV. <i>Announcements</i>	546
V. <i>Addresses Delivered at the Cleveland Meeting:</i>	
<i>President Walter George Smith</i>	551
<i>Justice John H. Clarke</i>	567
<i>Hampton L. Carson</i>	583
<i>Tsunejiro Miyaoka</i>	604
<i>General George P. Scriven</i>	620
<i>General Emilio Guglielmotti</i>	640
<i>Federico Cammeo</i>	645
<i>James M. Beck</i>	656
VI. <i>Contributions of Comparative Law Bureau:</i>	
<i>The Mexican Revolution in Word and Deed</i>	681
VII. <i>Index for Vol. IV. (1918) American Bar Association Journal</i>	699

OFFICE OF PUBLICATION

1416 Munsey Building, No. 7 North Calvert Street, Baltimore, Md.

THE LORD BALTIMORE PRESS: PRINTERS

Price, 75 cents a copy

YALE LAW JOURNAL

VOL. XXVII

JUNE, 1918

No. 8

CONTENTS

Contingent Remainders and Other Possibilities	Charles Sweet <i>London, England</i>	977
Common Law and Common Sense	Hon. Wm. Renwick Riddell <i>Supreme Court of Ontario</i>	993
Contracts for the Benefit of Third Persons	Arthur L. Corbin <i>Yale University School of Law</i>	1008
Conflict of Laws in Latin-American Countries	T. Esquivel Obregon <i>Mexican Bar</i>	1030
Comments		1046
Negotiability and the <i>Renvoi</i> Doctrine	1046	Efficiency or Restraint of Trade 1060
Amendments and the Statute of Limitations	1053	Tort and Contract in the Marketing of Food 1068
Foreign Inheritance Taxes as Expenses of Administration	1055	Foreign Corporation Taxes and Interstate Commerce 1074

Recent Case Notes

Book Reviews

Current Decisions

Contributors to Volume XXVIII, 1918-1919 (partial list only)

William H. Taft U. S. War Labor Board	Simeon E. Baldwin Formerly Chief Justice of Connecticut
Edward G. Buckland President N. Y., N. H. & H. R. R. Co.	George B. Adams Professor of History, Yale University
H. W. Ballantine Dean University of Illinois School of Law	Albert M. Kales Chicago Bar
G. Gavet Professor of Law, University of Nancy	Paul Huvelin Professor of Law, University of Lyons
Luigi Luzzatti Ex-Premier and Professor of Constitutional Law, Rome	Nathan Isaacs Dean University of Cincinnati Law School
John M. Zane Chicago Bar	James Edward Hogg Lincoln's Inn, London
Edwin M. Borchard Professor of Law, Yale University	Walter W. Cook Professor of Law, Yale University
Arthur L. Corbin Professor of Law, Yale University	Ernest G. Lorenzen Professor of Law, Yale University
Morris Cohen Professor of Philosophy, College of the City of New York	Herbert Pope Chicago Bar
Herbert Harley Professor of Law, Northwestern University	Rodrigo Octavio DeL. Meneses Rio de Janeiro Law Faculty
H. Berthélemy Professor of Law, University of Paris	Edward W. Hinton Professor of Law, University of Chicago
	W. Blake Odgers Director of Legal Studies, Inns of Court, London

Subscription Price, \$2.50 per volume of eight numbers.

For \$7.50 a subscription for two years in advance will be entered, and volumes XXVI, 1916-1917, and XXVII, 1917-1918 (unbound) will be sent at once complete. This affords a chance to begin with the second quarter century of the Journal.

Address Yale Law Journal Company, Inc.

Yale Station

New Haven, Connecticut

1
-
8
-
7
3
8
0
6

-
as
-

-
ad
ad
-

at

Statement of the Ownership, Management, Circulation, Etc., required by the Act of Congress of August 24, 1912,

of THE AMERICAN BAR ASSOCIATION JOURNAL, published quarterly at Baltimore, Maryland, for October 1st, 1918.

STATE OF MARYLAND, BALTIMORE CITY, SS.

Before me, a Notary Public in and for the State and City aforesaid, personally appeared George Whitelock, who, having been duly sworn according to law, deposes and says that he is the managing editor of the American Bar Association Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, THE AMERICAN BAR ASSOCIATION, Baltimore, Md.
Editor, Hon. Carroll T. Bond, Court House, Baltimore, Md.
Managing Editor, George Whitelock, Secretary, 1416 Munsey Bldg., Baltimore, Md.
Business Managers, Executive Committee American Bar Association, as follows:

GEORGE T. PAGE, President
Peoria, Ill.

GEORGE WHITELOCK, Secretary
1416 Munsey Bldg., Baltimore, Md.

FREDERICK E. WADHAMS, Treasurer
Albany, N. Y.

WALTER GEORGE SMITH, Philadelphia, Pa.
R. E. LEE SANER, Dallas, Texas

ASHLEY COCKRILL, Little Rock, Ark.

T. A. HAMMOND, Atlanta, Ga.

U. S. G. CHERRY, Sioux Falls, S. D.

CHARLES THADDEUS TERRY, New York, N. Y.

EDMUND F. TRABUE, Louisville, Ky.

THOMAS H. REYNOLDS, Kansas City, Mo.

GEORGE B. YOUNG, Montpelier, Vt.

PAUL HOWLAND, Cleveland, O.

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.)

THE AMERICAN BAR ASSOCIATION

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent, or more of total amount of bonds, mortgages, or other securities are: (if there are none, so state).

NONE.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in case where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

GEORGE WHITELOCK, *Business Manager.*

Sworn to and subscribed before me this 14th day of September, 1918.

[SEAL]

NELLIE A. DAVIDSON, *Notary Public.*
(My commission expires May 4th, 1920.)

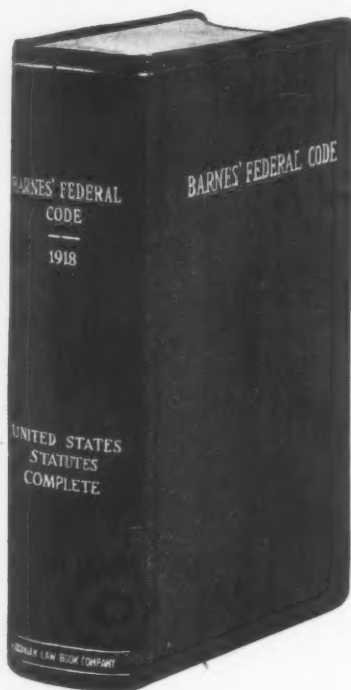
Subscription price to individuals, not members of the Association nor of its Bureau of Comparative Law, \$3 a year. To those who are members of the Association (and so of the Bureau), the price is \$1.50, and is included in their annual dues.

The Advertising Department is in charge of M. Curlander, Law Publisher, Baltimore, Md., to whom all communications as to advertising space and rates should be addressed.

Letters as to other business relating to the JOURNAL should be addressed to the office of publication; those as to the Bureau of Comparative Law to Robert P. Shick, 1107 Liberty Building, Philadelphia, Pa.; and those as to the general plan and literary contents of the JOURNAL to the Chairman of the Committee on publications, Carroll T. Bond, Baltimore, Md.

Entered as second-class Matter March 17, 1915, at the Post Office at Baltimore, Maryland, under the Act of August 24, 1912.

All General United States Statutes In One Volume



**Handy Flexible Edition
Genuine Morocco Binding
Opaque Bible Paper
Full Gilt Edges**

Barnes' Federal Code

**Complete Cross References
Parallel Reference Tables
to all other compilations of
United States Statutes**

*A Handy and Convenient Book
for all Places and Purposes*

**6x9x2½ inches
Genuine Morocco Binding
Opaque Bible Paper
Full Gilt Edges
3000 Pages**

All General **United States Statutes** *In One Volume*

BUILT LIKE A TEACHER'S BIBLE

PRICE \$12.00

The Bobbs-Merrill Company
Indianapolis, Ind.

The American Bar Association Journal

VOL. IV

OCTOBER, 1918

No. 4

OFFICERS

1918-1919.

PRESIDENT,

GEORGE T. PAGE, *Peoria, Ill.*

SECRETARY,

GEORGE WHITELOCK, *Baltimore, Md.*

TREASURER,

FREDERICK E. WADHAMS, *78 Chapel Street, Albany, N. Y.*

ASSISTANT SECRETARIES,

W. THOMAS KEMP, *1416 Munsey Building, Baltimore, Md.*

GAYLORD LEE CLARK, *1416 Munsey Building, Baltimore, Md.*

EXECUTIVE COMMITTEE,

EX-OFFICIO

THE PRESIDENT,

THE SECRETARY,

THE TREASURER,

WALTER GEORGE SMITH,

Ex-President,

Philadelphia, Pa.

R. E. LEE SANER,

Chm. Genl. Council,

Dallas, Tex.

ASHLEY COCKRILL, *Little Rock, Ark.*

T. A. HAMMOND, *Atlanta, Ga.*

U. S. G. CHERRY, *Sioux Falls, S. D.*

CHARLES THADDEUS TERRY, *New York, N. Y.*

EDMUND F. TRABUE, *Louisville, Ky.*

THOMAS H. REYNOLDS, *Kansas City, Mo.*

GEORGE B. YOUNG, *Montpelier, Vt.*

PAUL HOWLAND, *Cleveland, Ohio.*

SECTION OF LEGAL EDUCATION

WM. A. BLOUNT, *Pensacola, Fla., Chairman.*

CHARLES M. HEPBURN, *Bloomington, Ind., Secretary.*

SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW.

MELVILLE CHURCH, *Washington, D. C., Chairman.*

CHARLES E. BROCK, *Cleveland, Ohio, Secretary.*

JUDICIAL SECTION.

THOMAS C. MCCLELLAN, *Montgomery, Ala., Chairman.*

W. THOMAS KEMP, *Baltimore, Md., Secretary.*

COMPARATIVE LAW BUREAU.

SIMEON E. BALDWIN, *New Haven, Conn., Director.*

ROBERT P. SHICK, *Philadelphia, Pa., Secretary.*

AXEL TEISEN, *Philadelphia, Pa., Assistant Secretary.*

EUGENE C. MASSIE, *Richmond, Va., Treasurer.*

SECTION OF PUBLIC UTILITY LAW.

R. E. LEE SANER, *Dallas, Tex., Chairman.*

EDW. A. ARMSTRONG, *Princeton, N. J., Secretary.*

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

WM. A. BLOUNT, *Pensacola, Fla., President.*

HUGH H. BROWN, *Tonopah, Nev., Vice-President.*

MANLEY O. HUDSON, *Columbia, Mo., Secretary.*

W. O. HART, *New Orleans, La., Treasurer.*

AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

HUGO PAM, *Chicago, Ill., President.*

EDWIN M. ABBOTT, *Philadelphia, Pa., Secretary.*

II.

GENERAL COUNCIL

1918-1919.

ELECTED MEMBERS.

State.	Name.	Residence
ALABAMA	THOS. C. McCLELLAN	Montgomery.
ALASKA TERRITORY		
ARIZONA	WM. H. SAWTELLE	Tucson.
ARKANSAS	JOSEPH M. STAYTON	Newport.
CALIFORNIA	M. L. GRAFF	Los Angeles.
COLORADO	T. J. O'DONNELL	Denver.
CONNECTICUT	SEYMOUR C. LOOMIS	New Haven.
DELAWARE	JOHN P. LAFFEY	Wilmington.
DISTRICT OF COLUMBIA	MELVILLE CHURCH	Washington.
FLORIDA	WM. A. BLOUNT	Pensacola.
GEORGIA	J. HANSELL MERRILL	Thomasville.
HAWAII TERRITORY	F. W. MILVERTON	Honolulu.
IDAHO	JAMES E. BABE	Lewiston.
ILLINOIS	JOHN T. RICHARDS	Chicago.
INDIANA	DONALD FRASER	Fowler.
IOWA	JESSE A. MILLER	Des Moines.
KANSAS	CHESTER I. LONG	Wichita.
KENTUCKY	WILLIAM M. REED	Paducah.
LOUISIANA	W. O. HART	New Orleans.
MAINE	JOHN A. MORRILL	Auburn.
MARYLAND	T. SCOTT OFFUTT	Towson.
MASSACHUSETTS	HOLLIS R. BAILEY	Boston.
MICHIGAN	JOHN B. CORLISS	Detroit.
MINNESOTA	JAMES D. SHEARER	Minneapolis.
MISSISSIPPI	A. T. STOVALL	Okalona.
MISSOURI	W. L. STURDEVANT	St. Louis.
MONTANA	JAMES A. WALSH	Helena.
NEBRASKA	FRANK M. HALL	Lincoln.
NEVADA	HUGH HENRY BROWN	Tonopah.
NEW HAMPSHIRE	JOSEPH MADDEN	Keene.
NEW JERSEY	E. M. COLIE	Newark.
NEW MEXICO	C. M. BOTTS	Albuquerque.
NEW YORK	JULIUS HENRY COHEN	New York City.
NORTH CAROLINA	CLEMENT MANLY	Winston-Salem.
NORTH DAKOTA	S. E. ELLSWORTH	Jamestown.
OHIO	DANIEL W. IDDINGS	Dayton.
OKLAHOMA	ROBERT F. BLAIR	Tulsa.
OREGON	JOSEPH N. TEAL	Portland.
PENNSYLVANIA	HAMPTON L. CARSON	Philadelphia.
PHILIPPINES AND CHINA	FREDERIC C. FISHER	Manila.
PORTO RICO	ADOLPH S. WOLF	San Juan.
RHODE ISLAND	G. FREDERICK FROST	Providence.
SOUTH CAROLINA	P. A. WILLCOX	Florence.
SOUTH DAKOTA	TORE TEIGEN	Sioux Falls.
TENNESSEE	P. D. MADDEN	Nashville.

State.	Name.	Residence.
TEXAS	R. E. L. SANER.....	Dallas.
UTAH	C. R. HOLLINGSWORTH.....	Ogden.
VERMONT	W. B. C. STICKNEY.....	Rutland.
VIRGINIA	JAMES R. CATON.....	Alexandria.
WASHINGTON	JOHN J. SULLIVAN.....	Seattle.
WEST VIRGINIA	J. W. VANDERVORT.....	Parkersburg.
WISCONSIN	JOHN B. SANBORN.....	Madison.
WYOMING	CHARLES N. POTTER.....	Cheyenne.

EX-OFFICIO MEMBERS.

(Presidents of State Bar Associations.)

Association.	President.	Address.
Alabama State Bar Assn.....	J. MANLY FOSTER.....	Tuscaloosa.
Bar Association of Arkansas.....	JOHN H. CARMICHAEL.....	Little Rock.
Colorado Bar Association.....	THOMAS H. DEVINE.....	Pueblo.
State Bar Assn. of Connecticut.....	CHARLES E. SEARLES.....	Putnam.
Bar Assn. of District of Col.....	JUSTIN M. CHAMBERLIN.....	Washington.
Georgia Bar Association.....	SAMUEL H. SIBLEY.....	Union Point.
Bar Association of Hawaii.....	JOHN W. CATHCART.....	Honolulu.
Idaho State Bar Association.....	JAMES H. HAWLEY.....	Boise.
Illinois State Bar Association.....	WALTER M. PROVINE.....	Taylorville.
Indiana State Bar Assn.....	ERNEST R. KEITH.....	Indianapolis.
Iowa State Bar Association.....	HENRY L. ADAMS.....	Des Moines.
Bar Association of the State of Kansas	WM. E. HIGGINS.....	Lawrence.
Kentucky State Bar Assn.....	JOHN K. TODD.....	Shelbyville.
Louisiana Bar Association.....	CHARLES A. MCCOY.....	Lake Charles.
Maine State Bar Association.....	JOHN A. MORRILL.....	Auburn.
Maryland State Bar Assn.....	ARTHUR PETER.....	Rockville.
Massachusetts Bar Assn.....	ARTHUR LORD.....	Plymouth.
Minnesota State Bar Assn.....	LESLIE L. BROWN.....	Winona.
Mississippi State Bar Assn.....	S. E. TRAVIS.....	Hattiesburg.
Missouri Bar Association.....	JAMES C. JONES.....	St. Louis.
Nebraska State Bar Assn.....	ARTHUR C. WAKELEY.....	Omaha.
Nevada Bar Association.....	GEORGE A. BARTLETT.....	Reno.
New Jersey State Bar Assn.....	EDWARD Q. KEASBEY.....	Newark.
New Mexico Bar Association.....	HIRAM M. DOW.....	Roswell.
New York State Bar Assn.....	CHARLES E. HUGHES.....	New York.
North Carolina Bar Assn.....	E. F. AYDLETT.....	Elizabeth City.
Ohio State Bar Association.....	ENSIGN N. BROWN.....	Youngstown.
Pennsylvania Bar Assn.....	WILLIAM I. SCHAFER.....	Chester.
Rhode Island Bar Assn.....	WILLIAM P. SHEFFIELD.....	Newport.
South Dakota Bar Assn.....	GEORGE N. WILLIAMSON.....	Aberdeen.
Bar Association of Tennessee.....	JULIAN C. WILSON.....	Memphis.
Vermont Bar Association.....	ROBERT E. HEALEY.....	Bennington.
Washington State Bar Assn.....	CHARLES O. BATES.....	Tacoma.
West Virginia Bar Assn.....	HENRY CRAIG JONES.....	Morgantown.
State Bar Assn. of Wisconsin.....	JOHN B. WINSLOW.....	Madison.
Wyoming State Bar Assn.....	W. E. MULLEN.....	Cheyenne.
Far Eastern American Bar Assn.....	CHAS. S. LORINGIER.....	Shanghai.

III.
VICE-PRESIDENTS
AND
MEMBERS OF LOCAL COUNCILS

ELECTED 1918

ALABAMA.

Vice-President, LAWRENCE COOPERHuntsville.
Local Council, HENRY UPSON SIMSBirmingham.
Z. T. RUDULPH.....Birmingham.
WM. H. ARMBRECHT.....Mobile.
GEO. A. NELSON.....Decatur.

ALASKA.

Vice-President, FREDERICK M. BROWN.....Valdez.
Local Council, JOHN H. COBB.....Juneau.
RALPH E. ROBERTSON.....Juneau.

ARIZONA.

Vice-President, CHAS. H. RUTHERFORD.....Jerome.
Local Council, LEROY ANDERSONPrescott.
HENRY D. ROSS.....Phoenix.
JOHN H. CAMPBELL.....Tucson.
JOHN MASON ROSS.....Bisbee.

ARKANSAS.

Vice-President, GEORGE B. ROSE.....Little Rock.
Local Council, THOS. C. McRAE.....Prescott.
SAMUEL M. CASEY.....Batesville.
WM. H. MARTIN.....Hot Springs.
WM. B. SMITH.....Little Rock.

CALIFORNIA.

Vice-President, FRANK H. SHORT.....Fresno.
Local Council, LYNN HELMLos Angeles.
OSCAR C. MUELLER.....Los Angeles.
JOHN G. MOTT.....Los Angeles.
BRADNER W. LEE.....Los Angeles.

COLORADO.

Vice-President, WM. L. HARTMAN.....Pueblo.
Local Council, GEO. C. MANLY.....Denver.
SAMUEL H. KINSLEY.....Colorado Springs.
JOHN D. FLEMING.....Boulder.
FRED W. STOW.....Fort Collins.

CONNECTICUT.

Vice-President, WILLIAM BROSMITHHartford.
Local Council, ARTHUR M. BROWN.....Norwich.
EDWARD A. HARRIMAN.....New Haven.
C. L. AVERY.....New London.
FREDERICK W. HOLDEN.....Ansonia.

DELAWARE.

Vice-President, EDWARD G. BRADFORD.....Wilmington.
Local Council, ROBERT PENINGTONWilmington.
JOHN P. NIELDS.....Wilmington.
HENRY RIDGELYDover.

DISTRICT OF COLUMBIA.

Vice-President, GEORGE A. KING.....Washington.
Local Council, JULIAN C. DOWELL.....Washington.
CHARLES NOBLE GREGORY..Washington.
FREDERICK S. TYLER Washington.
NATHAN B. WILLIAMS.....Washington.

FLORIDA.

Vice-President, A. J. ROSE.....Miami.
Local Council, WM. HUNTERTampa.
N. P. BRYAN.....Jacksonville.
C. J. MORROW.....Tampa.
G. P. GARRETT.....Kissimmee.

GEORGIA.

Vice-President, SAMUEL B. ADAMS.....Savannah.
Local Council, HUNT CHIPLEYAtlanta.
W. H. BARRETT.....Augusta.
GEO. S. JONES.....Macon.
EDGAR WATKINS.....Atlanta.

HAWAII.

Vice-President, ALEX. G. M. ROBERTSON.....Honolulu.
Local Council, WILLIAM O. SMITH.....Honolulu.
W. L. WHITNEY.....Honolulu.
LYLE A. DICKEY.....Lihue.
ROBBINS B. ANDERSON.....Honolulu.

IDAHO.

Vice-President, FRANK S. DIETRICH.....Boise.
Local Council, CARL A. DAVIS.....Boise.
JESS B. HAWLEY.....Boise.
BERTRAM S. VARIAN.....Weiser.
ROBERT M. TERRELL.....Pocatello.

ILLINOIS.

Vice-President, MITCHELL D. FOLLANSBEE...Chicago.
 Local Council, ALBERT D. EARLY.....Rockford.
 WALTER M. PROVINE.....Taylorville.
 THOMAS FRANCIS HOWE.....Chicago.
 FREDERICK A. BROWN.....Chicago.

INDIANA.

Vice-President, CHARLES L. JEWETT.....New Albany.
 Local Council, GUS S. CONDO.....Marion.
 CHARLES MARTINDALEIndianapolis.
 CHARLES S. BAKER.....Columbus.
 THOS. E. DAVIDSON.....Greensburg.

IOWA.

Vice-President, THOMAS J. BRAY.....Oskaloosa.
 Local Council, GEO. F. HENRY.....Des Moines.
 WESLEY MARTINWebster City.
 WILLIAM TIMBERMANKeokuk.
 HARRY S. SNYDERSioux City.

KANSAS.

Vice-President, WM. OSMONDGreat Bend.
 Local Council, STEPHEN H. ALLEN.....Topeka.
 E. S. McANANY.....Kansas City.
 J. D. HOUSTON.....Wichita.
 C. S. DENISON.....Pittsburg.

KENTUCKY.

Vice-President, LEWIS APPERSONMt. Sterling.
 Local Council, SHELLEY D. ROUSE.....Covington.
 DENIS DUNDONParis.
 LAFON ALLENLouisville.
 ROBERT C. SIMMONS.....Covington.

LOUISIANA.

Vice-President, ALLAN SHOLARSMonroe.
 Local Council, H. H. WHITE.....Alexandria.
 FRED G. HUDSON, JR.....Monroe.
 W. J. CARMOUCHE.....Crowley.
 R. S. THORNTON.....Alexandria.

MAINE.

Vice-President, WILLIAM M. INGRAHAM.....Portland.
 Local Council, NORMAN L. BASSETT.....Augusta.
 WILLIAM H. LOONEY.....Portland.
 JAMES O. BRADBURY.....Saco.
 FRED V. MATTHEWS.....Portland.

MARYLAND.

Vice-President, WM. L. MARBURY.....Baltimore.
Local Council, WALTER I. DAWKINS.....Baltimore.
FREDERICK J. SINGLEY.....Baltimore.
WALTER L. CLARK.....Baltimore.
STEVENSON A. WILLIAMS....Bel Air.

MASSACHUSETTS.

Vice-President, HENRY N. SHELDON.....Boston.
Local Council, JOHN E. HANNIGAN.....Boston.
JOSEPH F. O'CONNELL.....Boston.
JOHN W. MASON.....Northampton.
LAWRENCE G. BROOKS.....Boston.

MICHIGAN.

Vice-President, BURRITT HAMILTONBattle Creek.
Local Council, FRED A. MAYNARD.....Grand Rapids.
F. L. DODGE.....Lansing.
A. H. RYALL.....Escanaba.
ADOLPH SLOMANDetroit.

MINNESOTA.

Vice-President, STILES W. BURR.....St. Paul.
Local Council, CLIFFORD L. HILTON.....Fergus Falls.
JAMES E. MARKHAM.....St. Paul.
GEORGE W. BUFFINGTON....Minneapolis.
FRANK CRASSWELLERDuluth.

MISSISSIPPI.

Vice-President, A. W. SHANDS.....Cleveland.
Local Council, LEROY PERCYGreenville.
J. S. SEXTONHazelhurst.
J. Q. ROBINS.....Tupelo.
S. E. TRAVIS.....Hattiesburg.

MISSOURI.

Vice-President, FRANK HAGERMANKansas City.
Local Council, A. L. ABBOTT.....St. Louis.
EUGENE McQUILLINSt. Louis.
VITAL W. GARESCHE.....St. Louis.
JAS. H. HARKLESS.....Kansas City.

MONTANA.

Vice-President, WILLIAM T. PIGOTT.....Helena.
Local Council, THOMAS J. MATHEWS.....Roundup.
E. C. DAY.....Helena.
WILLIAM SCALLONHelena.
HARRY H. PARSONS.....Missoula.

542 *The American Bar Association Journal*

NEBRASKA.

Vice-President, R. A. VAN ORSDEL..... Omaha.
Local Council, CHARLES B. LETTON..... Lincoln.
MATTHEW GERING Plattsmouth.
IRVING F. BAXTER..... Omaha.

NEVADA.

Vice-President, S. S. DOWNER..... Reno.
Local Council, L. G. CAMPBELL..... Winnemucca.
CHARLES S. CHANDLER..... Ely.
GEORGE L. SANFORD..... Carson City.
COLE L. HARWOOD..... Reno.

NEW HAMPSHIRE.

Vice-President, REUBEN E. WALKER..... Concord.
Local Council, FRANK N. PARSONS..... Franklin.
JAMES W. REMICK..... Concord.
FRANK S. STREETER..... Concord.

NEW JERSEY.

Vice-President, RICHARD WAYNE PARKER... Newark.
Local Council, JOHN R. HARDIN..... Newark.
MICHAEL DUNN Paterson.
ADRIAN LYON Perth Amboy.
GEO. A. BOURGEOIS..... Atlantic City.

NEW MEXICO.

Vice-President, WM. C. REID..... Albuquerque.
Local Council, ALONZO B. McMILLEN..... Albuquerque.
CLARENCE J. ROBERTS..... Santa Fé.
EDWARD R. WRIGHT..... Santa Fé.
WILLIAM G. HAYDON..... East Las Vegas.

NEW YORK.

Vice-President, EVERETT P. WHEELER..... New York City.
Local Council, CHARLES A. BOSTON..... New York City.
HENRY R. CHITTICK..... Brooklyn.
FRANK IRVINE Albany.
MAURICE C. SPRATT..... Buffalo.

NORTH CAROLINA.

Vice-President, PLATT D. WALKER..... Raleigh.
Local Council, R. LEE WRIGHT..... Salisbury.
WILEY MANGUM PERSON..... Louisburg.
T. C. GUTHRIE..... Charlotte.
CHARLES A. ARMSTRONG..... Troy.

NORTH DAKOTA.

Vice-President, HARRISON A. BRONSON.....Grand Forks.
Local Council, C. J. FISK.....Minot.
A. G. DIVET..... Fargo.
LEE COMBS Valley City.
H. H. REGISTER..... Bismarek.

OHIO.

Vice-President, EDWARD KIBLERNewark.
Local Council, D. C. HENDERSON..... Lima.
F. M. CLEVINGER.....Wilmington.
GEO. B. HARRIS.....Cleveland.
M. J. HARTLEY.....Xenia.

OKLAHOMA.

Vice-President, C. A. GALBRAITH.....Ada.
Local Council, H. H. ROGERS.....Tulsa.
T. T. VARNER.....Poteau.
GEO. S. RAMSEY.....Muskogee.
E. H. FOSTER.....Muskogee.

OREGON.

Vice-President, RICHARD W. MONTAGUE.....Portland.
Local Council, OSCAR HAYTERDallas.
JOHN H. McNARY.....Salem.
WIRT MINORPortland.
CHARLES J. SCHNABEL.....Portland.

PENNSYLVANIA.

Vice-President, WILLIAM H. STAAKE.....Philadelphia.
Local Council, H. A. KNAPP.....Scranton.
WM. M. HARGEST.....Harrisburg.
EDWIN M. ABBOTT.....Philadelphia.
J. McF. CARPENTER.....Pittsburgh.

PHILIPPINE ISLANDS AND CHINA.

Vice-President, CHARLES S. LOBINGIER.....Shanghai.
Local Council, THOMAS CARY WELCH.....Manila.
EDGAR PIERCE ALLEN.....Tientsin.
EARL B. ROSE.....Shanghai.
CHAUNCEY B. HOLCOMB.....Shanghai.

PORTO RICO.

Vice-President, MANUEL RODRIGUEZ-SERRA..San Juan.
Local Council, JOSÉ HERNANDEZ USERA....Miramar.
FELIX CORDOVA DAVILA....San Juan.
LUIS MUÑOZ MORALES.....San Juan.
JACINTO TEXIDORSan Juan.

544 *The American Bar Association Journal*

RHODE ISLAND.

Vice-President, THOMAS A. JENCKES.....Providence.
Local Council, CHARLES C. MUMFORD.....Providence.
CLIFFORD WHIPPLE.....Providence.
FRANCIS B. KEENEY.....Providence.
ELMER S. CHACE.....Providence.

SOUTH CAROLINA.

Vice-President, T. MOULTRIE MORDECAI.....Charleston.
Local Council, W. S. NELSON.....Columbia.
M. C. WOODS.....Marion.
L. D. LIDE.....Marion.
A. M. LUMPKIN.....Columbia.

SOUTH DAKOTA.

Vice-President, CHARLES S. WHITING.....Pierre.
Local Council, JOHN H. VOORHEES.....Sioux Falls.
JASON E. PAYNE.....Vermilion.
E. C. RYAN.....Aberdeen.
A. K. GARDNER.....Huron.

TENNESSEE.

Vice-President, ROBERT F. JACKSON.....Nashville.
Local Council, A. S. BUCHANAN.....Memphis.
ELIAS GATES.....Memphis.
JOHN A. CHAMBLISS.....Chattanooga.
JAMES H. ANDERSON.....Chattanooga.

TEXAS.

Vice-President, HIRAM GLASS.....Austin.
Local Council, S. P. ENGLISH.....Dallas.
RICHARD MAYS.....Corsicana.
ROBT. L. HOLLIDAY.....El Paso.
W. M. CROOK.....Beaumont.

UTAH.

Vice-President, P. L. WILLIAMS.....Salt Lake City.
Local Council, HERBERT MacMILLAN.....Salt Lake City.
WILLIAM H. FOLLAND.....Salt Lake City.
E. C. ASHTON.....Salt Lake City.

VERMONT.

Vice-President, GEO. M. POWERS.....Morrisville.
Local Council, JOHN W. REDMOND.....Newport.
LEIGHTON P. SLACK.....St. Johnsbury.
GEO. M. HOGAN.....St. Albans.

VIRGINIA.

Vice-President, JAMES H. CORBITT.....Suffolk.
Local Council, JOHN RANDOLPH TUCKER...Richmond.
 THOMAS W. SHELTON.....Norfolk.
 GEORGE BRYANRichmond.
 JOSEPH L. KELLY.....Bristol.

WASHINGTON.

Vice-President, CHARLES E. SHEPARD.....Seattle.
Local Council, BENJAMIN S. GROSSCUP.....Tacoma.
 REEVES AYLMORE, JR.....Seattle.
 WILMON TUCKERSeattle.
 WARREN W. TOLMAN.....Spokane.

WEST VIRGINIA.

Vice-President, J. B. SOMMERVILLE.....Wheeling.
Local Council, D. W. BROWN.....Huntington.
 NELSON C. HUBBARD.....Wheeling.
 M. H. WILLIS.....New Martinsville.
 J. O. HENSON.....Martinsburg.

WISCONSIN.

Vice-President, W. F. SHEA.....Ashland.
Local Council, LOUIS QUARLESMilwaukee.
 S. H. CADY.....Green Bay.
 A. H. REID.....Wausau.
 JOHN H. BENNETT.....Viroqua.

WYOMING.

Vice-President, CONSTANTINE P. ARNOLD...Laramie.
Local Council, WILLIAM C. KINKEAD.....Cheyenne.
 WILLIAM L. SIMPSON.....Cody.
 ANTHONY C. CAMPBELL.....Casper.
 RALPH KIMBALLLander.

IV.

ANNOUNCEMENTS.

MEETING OF EXECUTIVE COMMITTEE.

The Executive Committee will hold its mid-winter meeting in New York, N. Y., on January 3, 1919, at 10 A. M., at the rooms of the Association of the Bar, 42 West 44th Street.

Chairmen of committees are reminded of the resolution of the Executive Committee passed January, 1917, as follows, viz.:

"Resolved, That before action by the Executive Committee on the regular appropriations at the winter meeting there shall be required a statement in behalf of each committee, section or other organization desiring an appropriation, showing the unexpended balances of former appropriations, all unsatisfied obligations, and the specific purposes for which the appropriation is desired; that when an increase of appropriation over that of the last preceding year is asked there shall be required a statement of the specific expenditures to be made in the ensuing year in addition to or in excess of those of the preceding year, and of the reasons for such addition or increase."

PROFESSOR FEDERICO CAMMEO.

Professor Federico Cammeo of the Chair of Administrative Law in the University of Bologna, Italy, who is now on duty in the office of the Judge Advocate General at Rome, delivered an address at the annual meeting of the Association in Cleveland on "The Present Value of Comparative Jurisprudence," having been detailed by the Italian Government for that purpose in response to a special invitation by the Executive Committee. Professor Cammeo has written to the Secretary concerning his visit as follows:

NEW WILLARD HOTEL,
WASHINGTON, September 11, 1918.

Dear Sir:

Before leaving the United States I beg to tender to the American Bar Association my heartiest thanks for the honor of being invited to its annual meeting and the privilege of being elected an honorary member.

So much as I am thankful for the kind treatment extended to me, I have, as due, been much more moved by the repeated and enthusiastic manifestations that have been shown by the meeting on behalf of my country. Those manifestations, coming from such a renowned and influential body as the American Bar Association and from so distinguished and learned American citizens as its members, have a momentous political significance in Italy and of which I will acquaint my government.

I beg you to convey my best regards to the President of the American Bar Association.

Yours respectfully,
FEDERICO CAMMEO.

LEGAL SERVICES TO ENLISTED MEN.

The Association at its meeting on August 30, 1918, passed the following resolution:

"Resolved, That it is the sense of the American Bar Association that all the members of the legal profession throughout the United States should in their respective communities publicly announce their willingness and hold themselves in readiness in all cases where necessary to give their legal services during the war without charge to all men enlisted in the service of the United States and also to the dependents of all enlisted men."

MESSAGE FROM PROVOST MARSHAL GENERAL CROWDER.

General Crowder, after having accepted the invitation to address the Judicial Section of the American Bar Association at its recent meeting in Cleveland, was obliged to cancel his acceptance and remain in Washington. Members of the Association will appreciate the words of fine commendation contained in the message which General Crowder sent to the meeting when he found himself unable to attend in person. He wrote to Wade H. Ellis, of Ohio, as follows:

"It is with extreme regret that I have been compelled on account of the pendency of legislation amending the Selective Service Law, to forego the pleasure of attending the annual meeting of the American Bar Association and expressing verbally to my fellow-members my gratification that I belong to an association which mobilized the legal profession of the United States so thoroughly that the assistance which the lawyers of the country brought to the administration of the Selective Service Law and Regulations stands out as achievement beyond praise.

"On the eighth of last November the President, in his foreword to the Selective Service Regulations, called upon men of the legal profession to offer themselves as members of the Legal Advisory Boards for the purpose of advising registrants of their rights and obligations and assisting them in the preparation of their answers to the questionnaire.

"Five days later I addressed to the Vice-Presidents and members of the General Council of the American Bar Association, including the officers of the state bar associations, letters outlining plans for the organization and effective operation of Legal Advisory Boards. So expeditiously did the officers of the American Bar Association organize a central committee in each state, and select and organize the Legal Advisory Boards attached to each Local Board, and so spontaneously did the members of the legal profession throughout the whole country respond to the call of duty, that, one week later, and nearly a month in advance of the time when the Legal Advisory Boards would be required to begin their actual labors, I was able to write to the Secretary of the American Bar Association as follows:

"By reason of the valuable services rendered by you and by the national officers of the Association and by the Vice-Presidents and members of the General Council in the respective states, and by the prompt and almost universal response of the members of the Association generally, Legal Advisory Boards have been fully organized in many of the states and are being rapidly organized in others, and I have no doubt whatever that the aid to be rendered by them during the classification of registrants, which will begin about December 15, will make the accomplishment of the classification completely successful."

"In fact, the members of the profession generally, after the President's call was published and before they learned of the definite plans of organization, were so impatient to respond to the call that meetings of lawyers, for preliminary organization, were held throughout the length and breadth of the land, such meetings being attended by hundreds and sometimes by thousands.

"A large volume would not suffice to regard the names of the lawyers of the country and a bare summary of their labor and achievements. A brief citation of the figures of one state alone, and this not the largest, shows that there were organized within two weeks 850 permanent members and 3000 associate members of the Legal Advisory Boards; that, during the months of December and January, these boards held more than 4000 meetings and devoted more than three million hours to aiding and advising more than 400,000 registrants. In the greatest city of the nation, where half a million registrants were required to respond to the questionnaire, the permanent and associate members exceeded three thousand in number.

"When it is borne in mind that 100,000 lawyers, serving in the capacity of members of the Legal Advisory Boards, Government Appeal Agents and permanent and associate members of Legal Advisory Boards, took part in aiding, advising and classifying more than nine million registrants within the brief period allotted, it immediately becomes evident how impossible it is to comprehend the grand total of the accomplishment. It is equally apparent how futile would be the effort to express adequate appreciation of such labor and achievement.

"I take this opportunity of reminding you that a yet greater task awaits us in the near future. Not only will there soon be registered a greater number of our fellow-citizens than have heretofore been registered, but the problem involving the fair and just classification of the men of the new ages will be vastly greater than those in the solution of which the lawyers of the country have so ably aided in the past; and I take this opportunity of urging that the State Central Committees composed of the officers of the Association immediately take active steps toward seeing to it that the great organization of Legal Advisory Boards shall remain intact and be strengthened wherever it may be necessary in order that in every city, town and hamlet they will be prepared again to take up the task and render the same faithful and efficient service which they have contributed in the past and for which the whole nation is grateful."

UNIFORM FLAG ACT.

Upon the report of the Committee on Uniform State Laws, the Association adopted, at the meeting at Cleveland, a resolution approving the **Uniform Flag Act** prepared by the National Conference of Commissioners on Uniform State Laws, and recommending it for adoption by the various states.

The Vice-President and Member of the General Council from each state will please note the above recommendation by the Association, and will endeavor, in accordance with By-Law XII of the Constitution, to procure the enactment by their legislature of the act approved by the Association. A copy of the act will be found in the July JOURNAL, page 539; additional copies may be had on application to the Secretary.

HONORARY MEMBERS.

The Executive Committee at the recent meeting in Cleveland elected to honorary membership in the Association two dis-

tinguished jurists, Hon. Tsunejiro Miyaoka, of Japan, and Professor Federico Cammeo, of Italy.

BINDING THE JOURNAL.

The Lord Baltimore Press is prepared to bind THE AMERICAN BAR ASSOCIATION JOURNAL in uniform binding at a cost of \$1.50 per volume. In color and style the binding will be similar to that of the Annual Reports. Members desiring to have the four numbers of the 1918 JOURNAL bound in one volume, will please communicate directly with The Lord Baltimore Press, Greenmount Avenue and Oliver Street, Baltimore, Md.

MEETINGS OF STATE BAR ASSOCIATIONS.

MASSACHUSETTS BAR ASSOCIATION, November, 15, 16, 1918, Lowell.

OREGON BAR ASSOCIATION, November 19, 20, 1918, Portland.

NEBRASKA STATE BAR ASSOCIATION, December, 1918.

OKLAHOMA STATE BAR ASSOCIATION, December, 1918.

THE RHODE ISLAND BAR ASSOCIATION, December, 1918.

THE ARIZONA BAR ASSOCIATION, January, 1919.

BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, January, 1919, Washington.

BAR ASSOCIATION OF THE STATE OF KANSAS, January, 30, 31, 1919, Topeka.

MAINE STATE BAR ASSOCIATION, January 8, 1919, Augusta.

NEW YORK BAR ASSOCIATION, January 17, 18, 1919, New York City.

WYOMING STATE BAR ASSOCIATION, January, 1919.

IDAHO STATE BAR ASSOCIATION, January 21, 1919, Boise.

VERMONT BAR ASSOCIATION, January 7, 1919, Montpelier.

BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

Report of the New York State Bar Association, 1918.

Proceedings of the Kentucky State Bar Association, 1918.

Legal Booklet for Guidance of Soldiers and Sailors published by the State Council of Defense of the State of Idaho.

V.

ADDRESSES DELIVERED AT THE
CLEVELAND MEETING.

ADDRESS OF THE PRESIDENT.

WALTER GEORGE SMITH,
OF PENNSYLVANIA.

CIVIL LIBERTY IN AMERICA.

When we parted a brief year ago after pledging to our national government the full and unqualified support of the Association in the conduct of the war, it was with the hope that when we met again either the conflict might be ended or at least the end might be in sight. This was not to be. Although hundreds of thousands of lives have been sacrificed and billions of property destroyed, yet the armies of the allies have before them the necessity of indefinite struggle and unceasing endurance until the enemy of Christian civilization is forced to yield to the power of the sword. The year has been fruitful in many ways. Our people have been welded together by the ardor of a patriotism that knows no class, condition or creed. We realize at last that we are living in one of the greatest crises of recorded history. All illusion has been dispelled. We see there can be no compromise with a power which rejects the common sense of justice, which cynically disregards the obligation of treaties and carries on an unholy war with an atrocity so heinous as to degrade humanity. After the exercise of a patience which tried our souls, the American Republic has put forth its strength. Our people have learned that to preserve their independence and honor—"honor which is no other than the most elevated and pure conception of justice that can be formed" they must prosecute this war to the very end, at whatever cost of blood or treasure. They have learned that peace and happiness cannot be won by submission to tyranny; that not only their own well being but that of unborn generations depends upon their courage and tenacity at this fateful time. They have discarded the teachings of a false humanitarianism which encouraged "The hoarding up of life for its own sake, seducing us from those considerations from which we might learn when it ought to be resigned."

They have learned

"By a benign ordinance of our nature that genuine honor is the handmaid of humanity; the attendant and sustainer both of the sterner qualities which constitute the proper excellence of the male character and of the gentle and tender virtues which belong more especially to motherliness and womanhood."¹

More than a million and a quarter of our soldiers are on the battlefields of Europe, another million and a half is in training and indefinite others require only the word of command to leave their vocations and take up arms.

We may then feel encouraged, nay confident, that however distant the goal will be attained, if we are but true to the ideals to which we are pledged. There must be no truce with moral evil, no halfway measures, no compromise between right and wrong. The issue is clear cut. On the one hand are justice, truth, respect for plighted faith and international law whether sanctioned by panoplied armies and ships of war or resting upon those cardinal principles of right implanted by the Creator in every human breast, illumined by His Divine Son when he took upon Him the form of man, on the other, the negation of justice, of truth, of morality, of all that makes our common nature superior to the beast that perisheth.

We have been wandering in a wilderness of false doctrine; we have forgotten in our ease and comfort that every gift is accompanied by an obligation of duty. With a selfish disregard of primary principles we have permitted the growth of the malign power now threatening the foundations of civilization while it was gaining its portentous strength. Bitter as we find the discipline, it will be for the ultimate good of mankind if this war shall teach us that neither nations nor individual men can evade the rule of duty without paying the penalty of suffering. It is easy to look back upon the history of the past half century and see how through the oppression and dismemberment of France, the reactionary forces in Germany gained their dominance, while the civilized world instead of rebuking sat in awe if not in admiration of the treachery which brought about an unjust war and then consolidated its gains by a half century of preparation for universal conquest. For more than two generations the

¹ Wordsworth Convention of Cintra 61.

materialistic philosophy of Germany has been undermining the idealism of Christian nations and all that has been gained in the slowly upward trend of justice among men. It is worth much that the scales have fallen. The myriads of gallant men who have yielded up life or returned blind or maimed from the trenches have not suffered in vain. By their supreme heroism they have shown us something of the eternal verities we were almost forgetting.

It is a commonplace that the old order has changed under the stress of this all-embracing war. Just as the world took a new birth after our Civil War in America and by the extirpation of slavery a great moral issue was forever settled, so we may well believe that when the power of Prussia and her vassals is finally broken another moral issue will be settled throughout the world for all mankind, the right of peoples to self-government. It has been an age-long struggle. Not until in the fulness of time after the English Colonists had transplanted the seed of individual freedom to the virgin soil of this continent and they fructified in the Constitution of the United States, did there seem to be a reasonable hope that men could live in communities and choose for themselves their own form of government. For less than a century and a half this great experiment, absolutely without precedent, has been tried under the gaze of an astonished world. Thinly scattered along the Atlantic seaboard, three millions of English, Scotch, Welsh and Irish freemen laid the foundations of a nation that has become the hope of the world. Through the vicissitudes of the Colonial period, the agony of the Revolution, the critical years of the formation and adoption of the Constitution, the fierce controversies of the slavery period, the test of the greatest civil war in modern history, and the settlement of the West it has proceeded on its triumphal course until it stands today nearly fifty sovereignties in local affairs under the national sovereignty of the federal government, a spectacle for the awe and delight of all lovers of mankind.

"The little seed,

Which tyrants laughed at in the dark,

Has now become a bulk of spanless girth,

Which shoots on every side a thousand mighty arms."

Yet, so short a time in human history marks the limits of our national life that it is well to moderate our confidence and contem-

plate with sobriety the causes of our success. It may be confidently maintained that at no time in the world's existence has so large a population lived with so greatly diffused a comfort and decency of life, or so high a standard of morality, granting the many defects that show how far we fall below the ideal condition of human society; but we cannot be blind to the fact that hitherto the problems which have tested the nations of the old world have been made less acute with us because of the natural wealth of our continent—a wealth as yet by no means exhausted, wastefully as we have used it. Now we are feeling the searching tests put upon our system by social questions unknown to the Fathers of the Republic. As we shall successfully deal with them will the issue be determined. Admitting the doubts and dangers of the future may we not claim that the progress made, the dangers overcome, the splendid example set by our people, may be traced primarily to the principles of civil liberty which suffuse our national and state constitutions, principles established by centuries of struggle between men instinctively free and those who would exploit them in the interest of privilege as shown by every page of English history.

What is civil liberty? It is thus defined by Blackstone:

“Political therefore, or civil liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public.”

And therefore

“That constitution or frame of government, that system of laws, is alone calculated to maintain civil liberty which leaves the subject entire master of his own conduct, except in those points wherein the public good requires some direction or restraint.”^a

The most superficial reading of English law shows its whole end and object to be the protection of the individual in his rights assumed as a postulate from the fact of his being. Those rights are life, liberty and property. While it is true our English ancestors extorted the recognition of these rights from unwilling sovereigns, and it may be a nice question for historical research whether they did or did not exist theoretically in common acceptance before Magna Charta, certain it is that when the delegates to the Constitutional Convention of 1787 met in Philadelphia they

^a Bla. Com. 125.

acted upon the assumption that they represented the people of all of the states, with whom rested the absolute power to frame any form of government they might prefer, and above whom there existed no other human power that either in theory or in fact could thwart the expression of their absolute will. We know how the work was done, the patient deliberation, the series of compromises necessary to final agreement, the anxiously awaited outcome of the state conventions which finally ratified it. In his exposition of the outlines of the Constitution when he urged it for adoption before the Pennsylvania Convention, James Wilson, after defining civil liberty essentially as did Blackstone, pointed out that there exists another kind of liberty recognized in the Constitutional system which he distinguished by the appellation of federal liberty saying that

“When a single government is instituted the individuals of which it is composed surrender to it a part of their natural independence which they before enjoyed as men. When a confederate republic is instituted the communities of which it is composed surrender to it a part of their political independence which they before enjoyed as states. The principles which directed in the former case what part of natural liberty of the man ought to be given up and what part ought to be retained, will give similar direction in the latter case. The states should resign to the national government that part and that part only of their political liberty, which placed in that government, will produce more good to the whole than if it had remained in the several states. While they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties as states, so far as it is compatible with the welfare of the general and superintending confederacy.”³

It was upon this theory that our national and state governments were formed, viz.:

That all sovereignty rested in the people; that by self-imposed limitations upon that sovereignty they erected the political structure, reserving to themselves the power to change their Constitutional government through appointed methods set forth therein whenever it should be their will to do so. Realistic philosophers have denied the premises of the inalienable rights of the individual which are the basis of English law and which are ingrained in our own. It is contended that so far as the relation of the individual to the state is concerned,

³ 3 Elliot's Debates 232.

"It supposes and opposes two contradictions—the sovereignty of the state and the autonomy of the individual."

Thus says Leon Duguit:

"Let us recall the terms of the problem. The state is sovereign; but such sovereignty has its limits. The foundation for and the determination of these limitations are found, according to the individualistic doctrine, in the existence of the natural rights of the individual anterior to the state, which the latter must respect and guarantee, but to which it can add limitations to the extent necessary to protect the rights of all.

"This being granted we cannot escape the following dilemma: Either the autonomy of the individual ceases to limit the power of the state, to determine the extent of the restrictions which it can bring to bear upon the individual activity of each—in which case the state ceases to be sovereign, since there is a will other than its own which comes to determine the limitations upon the manifestations of its own will—and so the sovereignty of the state disappears or else by reason of this sovereignty the state determines fully and without reserve the restrictions in which in its sovereign discretion it thinks ought to be brought to bear upon the autonomy of the individual. In that case it is the autonomy of the individual which disappears."

Such rigid logic may not be assailable, but the world is not governed by logic, nor can its phenomena be explained by ignoring the existence of springs of action that are far removed from the realms of pure reason. It is a fact that the sovereign of England is answerable through his agents for violation of the law of England to the people in Parliament. In the United States the final sovereignty, meaning by that word the power under the law, rests in the people and only a part has been delegated either to the state or to the nation. The present monstrous war with all of its evil consequences is directly traceable to the theory of absolute sovereignty resting in the state unqualified in any way save by the will of him who, for the time being, wields its power. This is proclaimed by the Prussian King and practiced by him both as King and Kaiser. Since he is above the restrictions of law, not bound by any superior jural principle, there is nothing in municipal law defining and protecting the individual citizen nor in international law regulating his dealing with other nations. "Might is right" as the German philosophers teach, and the

³¹ Harv. Law. Rev. 25.

citizen loses all individuality to become merely a component part of the great political machine of which the will of the sovereign is the motive force. During the last few years, both in peace and war, we have had object lessons to show the results of this theory carried into regular practice from the incident of Zabern to the spoliation of Belgium and France. It is the antithesis of the American development of the English theory of sovereignty, and of the democratic ideal of government wherever it has been established. It must be grappled with in all of its Protean manifestations. It shows itself in its crudest form in Germany, but it has its advocates wherever the doctrine of absolute state sovereignty is taught. It is not the less but the more to be dreaded in the extreme theories of those who would supplant our constitutional limited government by a pure democracy than in the absolutism of the German school; for bad as it is, it were better to have the soul-crushing order of despotic rule emanating from a single individual than the anarchy which has brought Russia to the verge of ruin.

The theory upon which the scheme of our federal government was drawn out, assumed that it would be sustained and administered by a self-restrained, educated electorate, who would realize that a constant supervision of public affairs is a prerequisite to the preservation of civil liberty. The danger to our institutions and the end for which they exist arising from ignorance and indifference to Constitutional limitations is greater than that threatened by the foreign foe.

The report of the Committee on Noteworthy Changes in the Statute Law shows how earnestly the American people desire that the whole national power shall be thrown into the war. The committee well says:

"This war has demonstrated the impossibility of separating the civilian population from the government and its military forces . . . so in our legislation there has come about a great development of the conception of the war power. Originally understood as authorizing extraordinary action in the actual theatre of military operations, it is now held to justify extraordinary regulation outside of and far removed from the theatre of war."

⁵ Bulletin Am. Bar Assn., 1918.

Congress, responding to the wishes of the people has with commendable patriotism put at the disposal of the President a power never before vested in the Executive Department of the government. With a suddenness difficult to realize, well nigh every act of the citizen is put under federal regulation—his food, his fuel, his communication with his fellows are all subject to official supervision, and he is made to realize as never before that all he has of material wealth, of physical strength, can be taken under a power that before touched his individual freedom of action in many ways, it is true, but never so heavily. This is as it should be. In time of national danger there can be no greater evil than half-hearted action by the appointed servants of the people. When the war is triumphantly ended, Congress may and should repeal all those measures which are only permissible, because of the exigency of the times. It is not for us to criticise with too great particularity—laws framed to meet emergencies we could not foresee in times of peace. There should be no division of effort as there is no divided patriotism among the great masses of the people. What we have to fear is the short-sighted provincial attitude of certain elements who are seizing the opportunity to force changes in our fundamental laws to meet theories of social life not supported by experience, and upon which there is wide divergence of opinion.

It is a marvel that the prescient wisdom of the statesmen of the closing years of the eighteenth century could have constructed a charter of government which, with few changes affecting its basic principles, has served so well during all of the nineteenth and far into the twentieth century. Habits of life in many aspects have changed more in the past three generations than in any similar period of which we have knowledge. Yet, the simple, elastic, comprehensive provisions of our national Constitution, clarified by the venerable tribunal which is its final interpreter, have served to protect life, liberty and property, while all the other civilized nations have discarded, sometimes repeatedly, systems contemporaneous with our own. Wherein lies the secret of this successful effort to deal with the most subtle and difficult of human problems? Is it not to be found in the fact that all of the principles embodied in our Constitution were based upon the experience, the accumulated wisdom, of the past? Never before has there

been, never again will there be such an opportunity as presented itself in the Convention of 1787. As was justly said by James Wilson, after a period of six thousand years, the United States exhibited to the world:

"The first instance, as far as we can learn, of a nation unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully and deciding calmly concerning that system of government under which they would wish that they and their posterity should live."³

Is it an undue conservatism that leads the lawyers of America to look with suspicion on suggestions of change that would vitally affect the venerable instrument which was the outcome of those deliberations? Is it not an evidence of lack of understanding of the lessons of history to believe that even after all the changes that time has brought about, the springs of human action are also changed? Before this war dispelled the illusion, there were many who believed that our common nature had been so modified that a religion of humanitarianism would put an end to war and bring in an era of peace and international justice. We now know the contrary. The most frightful illustrations have shown us that intellectual culture and accurate knowledge of exact science have made of the superman a Frankenstein's monster. Why then should we follow the heresies which he sets before us? Why turn from the old paths trodden by our ancestors? True it is that conditions are constantly changing, and it may well be that the necessity for expansion of national powers will require radical Constitutional amendments; but it would be lamentable if such amendments were carried to a point of complete destruction of the principle of local self-government by the further depression of the power of the state in matters of local concern. The growth of urban population, the hampering of interstate business by arbitrary state tax laws, the bitter jealousies arising out of the contests between workmen and employers, have prepared the ground for widespread dissatisfaction apparent everywhere throughout the Republic. There has grown up in many places a feeling that the time honored opposition to paternalistic government after all is a mistake and free competition and the working out of economic laws must give place to gov-

³ 3 Elliot's Debates 227.

ernmental regulation. Socialistic theories reaching to the most intimate concerns of daily life have warped the former attitude of large bodies of voters. We were but recently the astonished and disheartened witnesses of a national Congress forced by the threat of a general railroad strike to enact a law dictated by a special interest, fixing hours of labor and rates of wages upon the transportation system, which sets an evil precedent for the future. Obviously, the complex conditions of modern life have required and may still further require the interposition of the strong arm of the federal government in many ways for which the past shows no example. Our basic Constitutional law like all the rest is not an end but a means. The power to change or adapt it as necessity demands is inherent among the people whose will created it, but democracy will gain nothing from experience if a temporary majority in possession of political power forces amendments at a time of stress, which reverse the natural order and have for their end the molding of the individual to an artificial standard of morality which no man-made law can make him adopt.

It is in just such times of crisis as those through which we are now passing that civil liberty is in its greatest danger. Under the guise of efficiency, measures are forced through legislative bodies which in calmer moments would reveal themselves as fraught with peril, and none are more to be feared than those which place among criminal acts habits and customs which by no accepted standard can be classed as immoral. It was for the protection of civil liberty under just such conditions that the people imposed upon themselves Constitutional limitations of power. Better the endurance of ill until emotion and hysteria have time to abate their fervor than that we should surrender any part of the safeguards of individual liberty which, once gone, can never be regained save through the wearisome contests of centuries. Of course every legislative act must be judged on its own merits. The most jealous conservative should be willing to grant to the executive power all that Congress pledged when we declared our righteous war. What we can ill bear is the attempt to carry through amendments to the Constitution foreign to our theory of individual freedom and which we believe do not represent the intelligent and educated sentiment of the great body of voters. If this be a mistake, if they are really desired by the majority, they will come in good time, and no power can stop them; but now they should not

be urged to the division of public sentiment when the highest patriotism demands a united front against a common enemy.

The world-wide German propaganda has been more insidious than we yet realize. Having for its main object the subjection of the entire world it did not lose sight of the importance of destroying the ideals upon which free government finds its sure reliance. The old feudal notion of unchanged class conditions, where the sovereign is the apex of the pyramid, granting as it may suit his gracious will such limited freedom as he deems wise, cannot co-exist in a world so closely connected by lines of communication with the democratic belief in the equality of opportunity under guaranty of law and the protection of a government which does not rule, but carries out the wishes of the people. Through the medium of her universities, the prestige of her efficiency and the glamour of her wealth based upon the plunder of her neighbors, the new empire with its Neo-Byzantinism sedulously corrupted the fountains of education wherever it could in American institutions of learning, and filled our youth with theories of political and social life contrary to their inherited faith and destructive of their devotion to civil liberty.

Materialism utterly distinct from any motive but self-interest is the underlying principle of German philosophy, and upon her system of philosophy her national policy is based. All we have inherited of faith in the supernatural the only ultimate sanction of human conduct has been attacked by the teaching of German "Kultur." Unless we can apply a speedy antidote the virus will affect our whole social and political life. The loss of religious faith carries with it the loss of all the world has gained in the Christian era. The greatest gain in political science has been the ideal of democracy based upon the concept of the natural equality of all citizens in the eye of the law. This belief has proved the destruction of slavery as the most flagrant invasion of natural right, and has slowly taught the world that justice is the only all solving principle upon which any problem of human affairs can be finally settled. It is the real guaranty of civil liberty. For its maintenance this war is being fought and must be fought to the end.

This Association during the 40 years and more of its existence has grown from small beginnings to a position of recognized power

and prestige, yet its influence is necessarily exerted with none but moral sanction. To its members and their brethren of the Bar affiliated with them by a common education and a common ideal, the communities naturally look for guidance. Ignorance and indifference are the potential allies of those who seek to subvert our institutions from within. The report of your Committee to Oppose Judicial Recall shows the sombre spectre which threatens the citadel of civil liberty, the courts of law. Notwithstanding the plain letter of the Constitution, the obvious necessity for judicial interpretation of its provisions, the settled practice since the question first arose, there are not wanting men who can speak from high places and maintain the power to pass upon the constitutionality of an act of Congress is usurped by the Supreme Court, that

"When the Congress of the United States passes upon a question and declares it Constitutional, it is the highest competent authority in the Republic."

The committee reminds us that the creed of socialism includes the judicial recall in its worst form, that the menace of socialism has never been so great in this country, that

"The conditions of our country and its government in this time of the most strenuous war known to history have necessitated to some degree the temporary suspension of those constitutional protections which are observed by legislatures and courts in time of peace, and taking advantage of the situation the elements which chafe under constitutional restraint are inclined to look upon these conditions as a permanent step to an ultimate abrogation of constitutional limitations."¹

What the committee tells us of the aim of the "Non Partisan League" for abrogating constitutional protection and eliminating the primary functions of courts of justice and the progress it has already made in the Northwest, is unfortunately symptomatic of conditions more wide-spread than many of us realize. For half a century constitutional questions have been replaced in all great political contests by economic issues. The inadequate education of the voters in our political system has made them an easy prey to the demagogues and opportunists, as well as the theoretical moralists, who know nothing and care nothing for

¹ Rep. Com. to Op. Jud. Recall 1918.

those limitations upon hasty legislation which were embodied in our fundamental law as the fruit of the hard won experience of centuries. If we are to lose the protection of the Constitution, what guaranty for life, liberty or property will be left us when it suits any element of the community, sufficiently well organized and sufficiently in earnest, to persuade an ignorant electorate to place it in power? Under the protection of the courts civil liberty has grown and strengthened in England and in America, because the judicial power has proved its mainstay and support. Knowing all this, the most determined attacks are now directed against judicial independence both in nation and state by those who would remove all self-imposed limitations on the popular will.

The impression is cultivated that the judges, both state and federal, are unfair in their decisions, that the administration of the law is delayed and hampered by unnecessary and archaic procedure resulting in a practical denial of justice. There is, admittedly, ground for the charge so far as it affects delays in procedure and, it is hoped to a negligible extent, so far as it is based upon political bias on the part of local judges in some of the larger municipalities. Investigations made by our own committees and appeals of distinguished lawyers and judges for reform in procedure have given emphasis to our profession's appreciation of the need of reform in many ways. But it should be in the direction of strengthening the courts and enlarging their rule-making power rather than by attempting to belittle the judicial office and to bring it to the level of a political prize. The earnest persistency of our Committee on Uniform Judicial Procedure to bring about legislation that will mark the first great step in improved legal procedure by removing the obstacles to uniform rules, has met obstinate opposition from certain powerful persons who have been so far successful in their efforts to resist this reform. So long as popular sentiment is taught to look with doubt and suspicion upon the only men who have the education and the detached interest necessary for the judicial office, just so long unsatisfactory conditions now existing in legal procedure will remain. Ignorance and prejudice have railed at the courts since Marshall's day, and have been too successful in their efforts to undermine popular confidence. Allowing for the infirmities of our common nature under circumstances that have become more

and more burdensome, the American judiciary have on the whole kept pace, as well as the legislatures would permit, with the demands for simplicity and speedy dispositions of litigated cases. The best judgment of those whose habits of mind and experience give weight to their conclusions is, that the remedy for many admitted evils in the present system of procedure will be found in a repeal of all the legislation by which it is sought to tie the hands of the judge in his own court, thus restoring him to the independence of the earlier days. He should have a secure tenure of office and a certain provision for his declining years. It is much to be hoped that the initial step advocated by our Association, putting the rule-making power for the federal courts of law in the hands of the Supreme Court as is now the case in equity, will be taken. Lawyers know better than their clients the burden of an ignorant or unscrupulous judge. Where justice is denied or but partially obtained under such conditions, there is good reason for deep feeling not only by the parties in immediate interest, but by the entire community. That there have been cases of dereliction and narrow adhesion to precedent by the American judges, it would be vain to deny; but that the fountains of justice have been sullied to such an extent as to warrant the vicious attacks made upon the whole body of the American judiciary by self-seeking men and theorists of the levelling school, is patently untrue. The judges in many of the states have had to contend with a series of statutes pressed to the limit, if not beyond the bound, of constitutional power, regulating the conduct of trials and reducing them as nearly as possible to figureheads in their own courts. This Association has made its earnest protest against attempts to bring about similar results in the federal courts by Congressional legislation. It will be found that it is not from the protection of the Bench in the performance of its solemn and exalted duties by security of tenure and control of the rule-making power that causes for dissatisfaction in the administration of justice have arisen, granting all that may be alleged as to undue conservatism and occasional arrogance of temper; but from the restriction of the free exercise of judicial power where interest or prejudice feared the outcome of its untrammelled exercise. In England since 1883, after the passing of the judicature acts, the old rule, that an appellate court should grant a new trial if error were

found in the record which could possibly have affected the jury in rendering their verdict, was changed and the burden of proof put upon the appellant to show that the verdict was affected by the alleged error. Statistics show under this new rule in a period of ten years, new trials were granted in less than three and one-half per cent of the appeals. The American Bar Association has striven earnestly to secure the adoption of a similar rule in the United States, and has been so far successful as to obtain appropriate legislation in twenty-five states and in the territory of Alaska. So far a bill to provide the rule for the United States courts has been presented by our committee and heard by the Judiciary Committee of the Senate in four consecutive Congresses. When it came up in February, 1917, it was laid aside at the request of one Senator under the courtesy of the Senate. Such a proceeding goes far to warrant the conclusion expressed by the chairman of our committee:

"When lawyers are blamed for the laws delay in the federal courts, we can justly reply that this is the fault not of lawyers nor of judges, but of the Senate."⁸

If it be admitted that

"Under the existing rule the administration of the federal courts has been neither speedy nor complete,"

or at any rate it falls short of the standard of the English courts, it must be obvious that the remedy has been refused by the legislative and not the judicial branch of the government. Dissatisfaction should not be visited either upon the Bench or the Bar so long as Congress fails to accept the proposed rule. Sufficient progress has been made in procedural reform by this Association and by the Bar Associations of the various states to give encouragement. The federal law forbidding appeal to the Supreme Court in criminal cases unless the court below or a justice of the Supreme Court shall certify probable cause,⁹ the adoption of the new equity rules by the Supreme Court, the act giving the federal courts either of original or final jurisdiction power to transfer after proper amendments of pleadings any cause from the law to the equity side of the court or vice versa,¹⁰ the act

⁸ Everett P. Wheeler 66 Univ. of Pa. Law Rev. 12.

⁹ Act of March 10, 1908.

¹⁰ Act of March 3, 1911.

giving to the Supreme Court power to review on *certiorari* the decisions of the Supreme Court of a state that a statute is repugnant to the Constitution, treaties or laws of the United States,"¹¹ are notable instances of what has been done and the way it should be done.¹² Let the power of the courts be strengthened rather than weakened, and procedural reform will keep pace with popular demand. It has been well said by an eminent lawyer

" that extreme technicality is a sign of an undeveloped system of law in which legal rights are subordinate to the procedure to enforce them and wherein the substance is secondary to the form. These forms were regarded with superstitious reverence in the early stages of society, but it is now recognized that the simpler the procedure the better it serves its purpose; this does not mean that we should substitute haste and want of consideration for deliberation and judgment, but it does mean that our judicial machinery must be so simple that justice will be literally brought home to the people, and that busy men can afford to litigate the complicated questions arising in our complex industrial life. . . . in each and every one of these methods of reform we find as an indispensable factor the enlarged discretion of an independent judiciary."¹³

To attain reform by so sane and scientific a method is not what is desired by the enemies of our constitutional democracy. Those elements which are most inimical to the civil liberty of the individual and would supplant it by state paternalism or extreme collectivism, find in the calm atmosphere of a court of justice influences deadly to the germs of revolution and disorder and therefore have directed their most desperate efforts to discredit the entire judicial system.

They will not succeed. The purifying trials of a common affliction and a common suffering are bringing the American people to a better realization of their political inheritance. In the confusion of the crisis there stands out the glorious fact that, however, we may have undervalued our civil liberty in the past, we realize now that without it life would be a servile burden. Our best and bravest are striving to defend liberty from without, let us show ourselves worthy of their sacrifice by preserving it from within.

¹¹ Act of December 23, 1914.

¹² Everett P. Wheeler, *supra*.

¹³ Frederick N. Judson Address to Pan. Am. Sci. Congress 1915-1916

A CALL TO SERVICE.

THE DUTY OF THE BENCH AND BAR TO AID IN SECURING
A LEAGUE OF NATIONS TO ENFORCE THE
PEACE OF THE WORLD.

BY

HONORABLE JOHN H. CLARKE,

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

In January, the last week of August seems so far away, and it is so difficult to deny Mr. Whitelock anything upon which he has really set his heart, that not long since I awoke to find myself face to face with an outstanding promise to address you here this evening, but without anything formulated or even formulating in my mind which seemed in the least likely to prove of interest to you.

As I sat in my study, confronted by this situation, my eye fell upon the forty-odd volumes of the reports of the American Bar Association, and as I reflected upon the hours and days of intense and intelligent labor which is there buried—I weigh my words—I forthwith determined not to discuss any of the recondite problems of the law—any of those things which Stephen Leacock would say lie “behind the beyond”—but that I would speak to you of some phase of the subject which fills the minds, and hearts, and souls of us all.

And so my subject has become, the duty of the Bench and Bar of the country to awake, as it is not yet awake, I am sure, to the responsibility which the great war has cast upon us, as an influential and learned profession, of putting forth all of the power and influence which we possess for the purpose of securing, as the most important result of the war, the establishment of “A League of Nations to Enforce the Peace of the World.”

I am quite aware that there is nothing new that I can say upon this subject, which has been the dream of mankind for centuries and the theme of wide discussion for many recent years,

but the selection is made because of the conviction on my part that new conditions have made the times ripe for such a league and because I believe that next after the winning of the war, the matter of first importance to our country and to mankind is the securing of a peace, so guarded by new sanctions, that the immeasurable calamity of modern war, through which we are now passing, may not again return to desolate the world.

I shall not address myself, Gentlemen of the Bench and Bar, to the expert international lawyers among you, but rather to those of the rank and file of the profession, upon whom will fall the duty of creating and giving leadership to that public opinion of our country, without which it will not be possible to take this fateful step forward in the organization of the international relations of the world. The detail of the constitution and organization of such a league will be for statesmen and international lawyers, but the securing of the acceptance of the principle involved and the answering of the objections to it will be for the general practitioners of the land, trusted counselors that they are of their neighbors in all matters of great public concern.

Fundamental to all that I shall say are these assumptions: that the German autocratic government shall be beaten to its knees and shall be definitely convinced that never again can a war of aggression be profitable in this modern world; that its military and naval establishments, as well as those of the other great nations, shall be greatly reduced and their arming for the future be greatly and strictly limited; and that after the war the German people, chastened as they will be in spirit and in purpose, shall be invited to share in a just, even in a generous, peace, without which the permanent peace of the world can never be secured.

Public international law, as we all know, first assumed definite form in the writings of the great philosophical jurists of the sixteenth and seventeenth centuries. It is made up of a blending of moral principles—of natural justice and reason—with the customs and practices of the more enlightened nations of the world in their dealings one with another.

With such an origin, naturally, some of the principles of this law had become more clearly defined than others prior to the outbreak of the present war, but none had been more generally accepted and observed than this: that the open seas are not the

territory of any nation and are not subject to the jurisdiction of any power, but that they are the public highway of all nations, provided by God and nature for carrying on the business and intercourse of the world. It was determined with equal definiteness that the open or high seas comprise all that part of every ocean which lies without a line drawn parallel to the shore and distant one marine league from low water mark. To that boundary the jurisdiction of the sovereign of the adjacent shore extends, but beyond it all waters are the common property of all nations. Long prior to this war it had also become the perfectly settled law of nations that private citizens of neutral states should be allowed to go to and fro on this ocean highway on peaceful errands in neutral ships or even in belligerent ships, not men of war, as safely in time of war as in time of peace, subject only to visit and search and to the law of blockade.

The German Government had frequently and solemnly assented to all this as perfectly established international law, but nevertheless, in arrogant defiance, it proclaimed exclusive dominion over more than a hundred thousand square miles of the open ocean adjacent to the British Isles and, without notice or mercy, proceeded, to the limit of its power, to destroy every neutral ship, its passengers and cargo, which had the temerity to enter the area thus proscribed.

The right of every nation to remain neutral during war and the duty of every belligerent to respect such neutrality has long been a rule of the customary or unwritten law of nations. When to this we add that in 1839 and again in 1870 the Kingdom of Prussia bound itself by solemn treaties to guarantee the neutrality of Belgium, and that in 1899 and again in 1907 the Imperial German Government, by Hague Conventions, bound itself in equally solemn agreement with many nations to respect that neutrality, the utter lawlessness of the invasion of Belgium would stand confessed even if the Chancellor of the German Empire had not publicly and scoffingly proclaimed it to be in open defiance of international law. "German faith," not "Punic faith," for all time to come will be the world symbol for international perfidy and dishonor.

In a Hague convention the German Government and its allies agreed with the other civilized nations that in case of war unde-

fended towns or villages should not be bombarded in any manner whatever; that in sieges and bombardments measures should be taken to spare as far as possible buildings dedicated to religion, art, science or charitable purposes and hospitals in which the sick and wounded are collected for treatment; and the use of poison or poisoned weapons, projectiles and materials calculated to cause unnecessary suffering was expressly prohibited.

And yet, further flouting this law which it had shared in making, the German Government has, now for four years, persistently bombarded undefended towns and villages, used poison gases, and selected libraries, churches and hospitals as special targets for destruction.

These instances, a few from many, will suffice to recall to us all how completely international law has broken down under the stress of the great war. It has been trampled upon as ruthlessly by the Central Powers as it was by Napoleon a century ago; and in presence of the international anarchy which is the result, men who prefer reality to self-delusion must be convinced, reluctantly but definitely convinced, that moral sanctions are not enough to restrain great nations engaged in war within the boundaries prescribed by civilization in time of peace, and that unless the coming settlement is to prove but an angry truce, a time of preparation for another war, the most pressing problem now before us is, how we may furnish new and effective sanctions which will cause international law to be respected and obeyed as fully in time of war as it has been heretofore obeyed in time of peace.

But what is this next war to be?

Military writers of Europe, obsessed with the belief that it is impossible for the future to improve upon the past and that another general European war is inevitable, are already busy discussing what its character shall be, and, in barest outline, this is the picture which they draw:

The Prussian military system, adopted by the other nations in this war, will be continued in preparation for the next and will result in creating armies of unprecedented size. So organized Russia should yield an army of 35 millions of fighting men, Germany and Austria 25 millions; Great Britain, France and Italy 25 millions; and to go no further, our army should exceed 20 millions of trained soldiers. To support such armies the indus-

tries of all of these countries must be organized primarily for purposes of war and the best energies of their peoples must be devoted to devising means for the destruction of human lives. Women must be conscripted for industry as men for fighting, and non-combatants will be destroyed as ruthlessly by other nations as they have been by Germany in the present war. Great guns now used by thousands will be numbered by tens of thousands, and machine guns by millions. Submarines will infest every sea and hundreds of thousands of air planes and dirigible ships will fill the air. Chemists confidently declare that, released from the restraints of civilization, poisonous gases will be devised, which, used by aerial flotillas and by guns of constantly increasing range, will destroy whole armies and cities in a single night. And finally, revolting though the thought of it be, other nations driven by desperation to the use of disease germs, now hinted at as the lowest depth to which Germany has sunk, will let loose a scourge upon the world the ultimate effect of which upon the human race no man can measure.

The mind turns away in horror from this prospect of another war which would involve the destruction of modern civilization, if not of the human race. And yet in the presence of the experiences of the past four years, of the unprecedented extent and merciless ferocity of the present war, it would be rash to say that this picture has been overdrawn, that it is not a probable description of the abyss that lies before us if measures be not taken to prevent the coming of another war.

Three solutions have been proposed to avert this measureless calamity:

The first, made in Germany, aims to establish a consolidated empire extending from the North Sea to the Persian Gulf, sufficient in extent to be self-sustaining in time of war and peace and with vassal populations great enough in numbers to support a German military establishment which it is believed could dominate the other nations, separated as they are, and thus be able to impose a permanent even though a sullen peace upon the world. To state this is to reject it.

The second, advocated sometimes by combinations of statesmen and men of business and sometimes by labor unions, proposes to strip the Central Powers of their military and naval strength and

of their colonies, to impose upon them huge indemnities for the crimes against civilization of which they are so clearly guilty, and then by boycotts to continue against them a trade war after the present war and thus to hold these powerful nations in permanent poverty and thereby in an unrighteous, which cannot be an enduring, peace.

The third, is "A League of Nations to Enforce the Peace of the World." The aim of such a league is to substitute conference for strife, justice and peace for cruelty and war, and in the happy phrase of President Eliot to bring "Peace on earth to men of good will."

This dream of mankind for centuries has been brought within the grasp of practical statesmanship by the declaration of President Wilson, assuredly voicing the desire and purpose of our whole great nation, that the period of American isolation has passed and that we are ready to unite with the other nations after the war in an international concert which shall hold the world at peace and render it impossible that such a catastrophe as is now upon us shall overwhelm us again.

Ladies and gentlemen, I have dwelt thus at length upon the necessity for a League of Nations and upon the desperate alternatives of our failing to obtain it, not because I think that your choice, or that of the country, could be different from that which has been made for us by our President, but because when we shall come to the adoption of the league as a practical agency in international government such grave difficulties must be met that we shall be obliged to recur for encouragement and resolution, perhaps again and again, to what the result will be if we reject this which now seems the last, best hope of the world—and to that end we should keep it vividly in mind.

For us, as a nation, there are grave constitutional questions involved, which it will be the duty of the Bar to argue to a conclusion with the people and in the courts, but of which it would be obviously improper for me to speak beyond recalling that the Supreme Court has declared that the Constitution is not a straight-jacket by which the past is to be imposed upon the present, and that it is not a mathematical formula of undeviating application of public affairs. I may be permitted to add that it is the result of the decisions of that court that the Constitution

is a working charter for a living government, which has proved in experience perfectly adaptable to conditions of life and society of which its framers never dreamed.

For other governments there are questions of dependent nationalities; the extent to which existing alliances may be continued without being inconsistent with such a league; and what prospect of fair treatment the nations failing in the war would have in its councils for many years to come.

There are difficulties for all the nations in determining what the membership of the league shall be, and what the system of law which shall govern its deliberations. *There must be delegation; if not surrender, of power, a difficult thing with men and nations, and a new restraint must be put upon national ambitions and pride. But above all there must be cultivated here and throughout the world a larger sympathy and vision—no less than an international mind. We must learn to look beyond frontiers and to find our national welfare in the general welfare of the world.*

Yes, the difficulties in forming the league, in devising a constitution for it and in putting it into practical operation are many and grave, but they are not greater than were met and solved by our forefathers when they formed the league of the thirteen original states, framed and adopted our Constitution and established this indissoluble union of indestructible states. The problem before us now is more complex and, if possible, more fateful, but it is in character the same and with this experience to guide us, ours is the nation which least of all should be discouraged or dismayed. The crisis is unprecedented in the history of mankind and the difficulties in meeting it, here, as on the field of battle, constitute a challenge to all that is strongest and best in the free nations of the world.

But what is this League of Nations to be?

The representative men of many nations are in singular accord in the conclusion that an international organization will not be accepted which goes farther than to imperatively provide that war shall not be commenced until the subject in dispute shall have been submitted to an investigation by an impartial tribunal and its merits reported upon, with a further delay after such report,

for new negotiations and for the public opinion of the nations involved to assert itself, informed as it would be by the disinterested investigation and opinion of the league.

It is widely believed that rarely would a nation assume the moral odium of going to war against the impartial conclusion of such a report, but it is also believed that in the present development of world opinion upon the subject, the governments would not consent to unite in an agreement to enforce the acceptance of such a report upon an unwilling and dissatisfied nation.

In this belief a group of distinguished American statesmen, lawyers and publicists, with former President Taft as their leader, have rendered a great public service by formulating a constitution or convention for such a league, which may serve as a starting point for discussion now and when the time shall come for settling the terms of the treaty of peace.

The fundamental principles of this constitution are only two and they are very simple:

The first is that no nation which enters the league shall make war upon any other member until the question in dispute between them shall have been submitted to an international court, yet to be constituted, if the question in dispute is a justiciable one, or to a Council of Conciliation if the question involved is non-justiciable in nature. The disputed question shall be investigated, with every assistance from the parties in the way of evidence and argument which the tribunal may desire, and a decision or report on the merits of the controversy shall be rendered in a written opinion, which shall be published. Such decision or report shall be published within a year after the case is submitted and neither party shall commence war against the other within six months after it is rendered.

The acceptance of this principle should present little difficulty, for thirty nations have already accepted it in treaties with our government which with great propriety have been officially termed "*Treaties for the Promotion of Peace.*" These treaties have all been executed since August, 1913, and all of the important nations at war have joined in them excepting Germany, Austria-Hungary and Turkey—a significant circumstance in fixing the blame for precipitating upon the world the calamity of the present war.

The second principle of the proposed league is that, if any member shall commence war upon another without submitting to the preliminary investigation and decision or report provided for, all of the others shall unite in the use of their economic resources and, if necessary, their military power to punish the recalcitrant member for violation of its pledged international faith.

Four years ago the first of these principles marked the extreme verge to which nations could be induced to go in the interest of peace, but the harsh teaching which they have received in the hard school of experience during the past four years has brought the responsible statesmen of the great nations to such a new sense of social duty and of international responsibility that the incomparable statement of President Wilson in favor of coercion to secure the peace of the world has called forth acceptances of it in principle from leading statesmen of Great Britain, France, Italy, Austria-Hungary, and for what it is worth from a Chancellor of the German Empire, as well as from leaders of many of the lesser and neutral states.

The constitution proposed contains many administrative provisions, but these two are the fundamental principles on which it proceeds. It is to be observed that the agreement to resort to economic coercion and to war is only to compel delay until there shall be investigation and decision or report and that it does not extend to enforcing such decision or report when either shall be rendered. After the requisite delay without incurring the odium of violating any covenant of the league, the savage tribunal of war would still remain open for any nation which should choose to resort to it.

While such a league would be a great advance toward permanent peace and should be accepted if a better cannot be secured, yet personally, I prefer the counsel of those who would strive to have the covenant of the league provide not only for delay until there shall be investigation and decision or report but also that all of the resources, military and economic, of the members shall be used to compel its acceptance when made and obedience to all of its commands.

This, not only because I do not share the confidence which many have, that a year's delay would suffice to prevent war by cooling

fierce national hatreds, such, for instance, as exist among the Balkan States or within the Austro-Hungarian Empire, or by calming national ambition such as that of Germany which has been half a century in cultivation and development, but also because I believe that the world is ready for this longer and final step forward toward permanent international peace.

Millions of men will return to their homes, in every one of the important nations which should be members of the league, convinced by the lapse into savagery which they have seen with their own eyes, that trial by battle is as irrational a manner of settling a national as a private quarrel, and that the nearest approach to securing a just decision of a dispute by human agency is to be found in a Council of Conciliation, or a court, selected from the wisest and best of the citizenship of the advanced nations of the world. In the free nations these men will return to a deserved and dominating leadership as the saviours of free government and in the enemy countries they will be all that will remain not discredited by defeat. Yes, I would confidently put my faith in the men who have seen the most of war, not at a distance, but in the trenches, "On the red edge of battle" as competent and willing to enforce a conclusion which makes for the enduring peace of the world.

Neither do I share the confidence which many persons have that our experience with our Supreme Court in settling disputes between states is conclusive evidence of what may fairly be expected of a similarly constituted international court dependent wholly on moral sanctions for the enforcing of its decrees. Not to dwell upon the futility of the Dred Scott decision so hopefully relied upon to avert civil war, or the unfortunate party divisions of the judges of the Electoral Commission of 1877, it is sufficient to say that it may be convincingly advanced that the Supreme Court, from very early times, to decisions rendered in the current year has steadily declined to take jurisdiction over questions falling within the scope of the powers of the political—the executive and legislative—departments of our government, and that it has been from political not from justiciable disputes that most of the past wars have sprung.

Here, if there were no other, is furnished to the Bench and Bar ample opportunity to serve our country in assisting our neigh-

bors in determining whether this fateful league shall be one merely to enforce delay and investigation or one the decisions of which shall have a sanction which will make them the accepted and obeyed international law of the world.

But whether this wider or the narrower scope shall be given to the league, the chief opportunity for service on the part of our profession will be in counsel with our fellow citizens as to its constitutionality and its membership, as to the wisdom of our country entering into any covenant—an entangling alliance it will be called—to engage in war it may be, to settle a quarrel which, it will be urged, may be no concern of ours, and as to the answers which should be given to objections which will range from those of the hopeless and timid who think progress impossible and that future wars are inevitable, to the Chauvanists and selfish who declare that war is not an evil, but is a discipline necessary for the development of all that is best in the physical and spiritual qualities of mankind.

To the objection that we should not expose ourselves to the risk of becoming a party to the future wars of others, the sufficient answer is that, it is no longer possible for us to avoid being a party to them. For three years our government strove with indomitable resolution to avoid participation in the present war, protesting, reasoning, warning, that there was a limit to our endurance of injury and insult, but with the result at last that we were obliged to take up arms—"to conquer or submit." These years of experience have demonstrated that the modern world is so knit together that our frontiers touch those of every other important nation; that the innocent must so suffer from future wars that self-respecting neutrality has become impossible in any general war, and that all wars are likely to become general, and that therefore it has become the chief concern of all the peace loving nations of the world that all war shall cease. Unless the league shall utterly fail of its purpose, membership in it will involve a covenant on our part to join the honorable nations of the world to protect ourselves and them from nations which are predatory and false, and waiving aside all higher motives, it is the part of prudence, if we must make war, to make it for a just cause and in the company of honest nations.

Shall Germany be an accepted member of this League of Peace? Yes, by all means, yes! and Austria-Hungary also, and necessarily the six other great powers of the world, France, Great Britain, Italy, Japan, Russia and the United States—for without all of these the league would not be one to enforce the peace of the world at all, but an alliance offensive and defensive to prepare for the next war. Alliances and coalitions of nations rarely have long lives. Great Britain and Germany were allies in the Napoleonic wars and France was their enemy; Great Britain, France and Turkey were allies in the Crimean war and Russia was their enemy; Germany and Austria were enemies at war in 1866; Russia and Japan, allies in this war, were enemies in 1905; the friendship of Great Britain for France and Russia is of recent origin and Italy was in terms an ally of Germany and Austria when the present war began. The teaching of this reference to the experience of a hundred years is plain. If Germany and Austria shall be excluded from the league all of the ingenuity and resource and power which they possess will forthwith be used to strengthen their alliance and to sow discord in and weaken that of their adversaries, and all Europe, divided again into hostile groups, will inevitably return to the old suspicions and to rivalry in arms and armaments in preparation for another war.

This also must be accepted as fundamental, that no peace can be enduring which is not a just peace and that no league can be permanent which does not afford a reasonable prospect of just treatment to every member of it.

To exclude the German and Austrian people from the league, to attempt to impoverish two such great nations and to hold them permanently poor, possessed as they have proved themselves to be of approximately one-half of the military power of the world, would be to invite new coalitions and alliances and would render inevitable that next war which the prophets of evil so confidently predict.

Equally unfortunate would it be to confine the membership of the league to the Great Powers. The presence in the league of the secondary and now largely neutral powers, including from America at least Argentina, Brazil and Chile, will be clearly necessary to persuade Germany and Austria to enter it, for otherwise they would see themselves opposed in the league, as they are now on

the field of battle, by the six other Great Powers and it would be futile to try to persuade them that for many years to come they could expect from such a court that impartiality and freedom from prejudice so necessary to securing a just settlement of any disputed questions by conference and argument. But in such larger group suggestions of disinterested fairness and sympathy would be possible on which all of the present combatants might confidently rely for an impartial hearing and a just decision.

It is just as necessary to the success of the league that every member nation shall believe that it will receive just treatment as that it actually shall receive it when the time of test shall come. We must aim at a constructive and healing peace—not at an angry, sullen truce which will lead to further war.

There is evidence enough of opposition to this view abroad in the world to make the cultivation of it an opportunity for fruitful service by the members of our profession, natural leaders that they are of that public opinion of our country, to which the responsible statesmen of the Allied Powers have already shown the greatest deference, as it has been formulated on this subject by President Wilson, in statements which it is not exaggeration to say have been "heard 'round the world."

Shall all questions in dispute between nations be submitted to the league, or shall those relating to vital interests, to independence or to national honor be excepted as they have been in arbitration treaties of the past? Or, differently and specifically, are we ready to submit the validity of the Monroe Doctrine, or the necessity for our going to war with France or Great Britain, with Argentina or Brazil, to the decision of a body in which we should have no greater vote than each of the seven other Great Powers would have?

Here is the test of our faith—the measure of our confidence in that international tribunal of peace and justice which we are recommending to the other nations of the world.

Not until our allies and friends shall become as internationally faithless as the Germans are, can we be called upon by the league to make war upon them, and that is a contingency which we refuse to consider.

Do we lack confidence in the moral basis of the Monroe Doctrine? There is one of us who does not. Whatever infirmity

may have been thought to be in a doctrine of such comprehensive scope when it was announced has disappeared in the experience of almost a century in which it has preserved all America from sharing in the conditions which precipitated the conflagration in Europe, and South America from the untoward fate which the partition of Africa has brought upon that unhappy continent. The noble conception which set apart this hemisphere to development under institutions of its own creating; which cut it off from the intrigues and jealousies of Europe, and which insuring it from alien influences has made possible the development of the strong and free states which have emerged, one after the other, to the south of us, has so justified itself that the Doctrine could confidently be submitted for approval to any tribunal which such a league would constitute. We all submit our private differences, involving our lives, our fortunes and our honor to domestic tribunals, and many of us with equal confidence often submit our rights to the determination of the tribunals of foreign states. Why should we prefer the gun and the torch for the settlement of public controversies? Does the cynical definition of a question of honor still hold true, as one which men refuse to solve by reason?

But I cannot pursue objections further in an address which I am admonished must be short. Their name is legion, they will come from the genuine and from the false, in every part of our land, and I am pleading with my professional associates that we accept it as our patriotic duty to be ready, in every town and hamlet, to answer them, and to advocate the taking of this step forward toward the realization of the reign of law, without which the allied nations will have fought this desperate war in vain.

The President calls us to this service in his declaration that "Mere agreements may not make peace secure. It will be absolutely necessary that a force be created, as a guarantor of the permanency of the settlement, so much greater than the force of any nation now engaged, or any alliance hitherto formed or projected that no nation, no probable combination of nations, could face or withstand it. If the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind."

The young men going forward to take their places in the line of battle call us to this service. In every land, with a unanimity which makes it all but a battle cry, they declare that, for them, this is a war to end all wars; that it shall not cease until the authors of it are punished and freedom and justice and peace are made secure in the world; and that never again shall such a calamity return to desolate the earth. These men will return to dominate, I repeat, to deservedly dominate, the governments which they have saved and they will not be balked in the accomplishment of their purpose.

But nevertheless, it is believed that there is, as yet, no such general thinking or discussion of this vital subject throughout our land as is necessary to the creating of a public opinion sufficient to sustain the President when he shall press it upon the attention of the nations as the most important provision of the treaty of peace—and assuredly there is no agency for the creating of such public opinion comparable to the Bar of the United States.

Ladies and gentlemen, the achievement of our country since we entered the war has been very great. Overwhelmed by the magnitude and horror of the struggle, the European nations did not realize the ultimate purpose of the Evil Genius of the German Government, until in accepting the challenge of the Central Powers, President Wilson put a new face upon the war and raised it to a new level, by declaring, what all the world instantly recognized as true, that this is the fateful, final contest between autocracy and freedom; that it is a war on Germany's part to restore the dominion of kingly government throughout the earth, and on our part and that of our allies to make the world "safe for democracy." This definition alone, watchword and ideal of the free nations that it has become, has proved a moral inspiration to them all equal to the winning of many battles.

When the failure of Russia released great armies for use upon the western front, how splendidly did our country respond to meet the crisis, thus precipitated, in the fate of freedom and of mankind! By a marvel of energy and organization, a million of men, since proved to be as good soldiers as any in the world, were safely and swiftly transported over 3000 miles of stormy and

pirate-infested seas to meet the savage onslaught upon heroic France. They met and turned back the tide of invasion and with our brave allies made the Marne "A river more fateful than the Rubicon," and gave us sure promise of abundant military glory yet to come.

But a greater honor lies beyond. When the war shall end, and the roar of the great guns shall cease, there is reserved the supreme distinction of all history for the nation which shall have the inspiration of vision and the greatness of soul to lead the other nations of the world out of the valley of the shadow of death of recurring wars into the haven of enduring peace. Pray God that nation may be ours!

HERALDS OF A WORLD DEMOCRACY.
THE ENGLISH AND AMERICAN REVOLUTIONS.

BY
HAMPTON L. CARSON,
OF PHILADELPHIA.

The world today is absorbed in the prosecution of the war, but when the battle-flags are furled the thoughts of men will be engaged upon the best means of establishing and safe-guarding a permanent and world-wide peace.

The contribution which England and America can make, and will be expected to make, to a common political philosophy, will be of the utmost practical value. Both nations have developed upon peculiar lines, the latter being the outgrowth and an enlargement of the former, with the additional but all-important feature of a Federal Constitution for the control of separate political sovereignties. Both nations have reached their present stages of rational and law-regulated liberty through revolutions, centuries old in gestation, painful in operation, but happy in their outcome. They have taught that progress is the resultant of conflict, the steady resistance of one force operating as a check to the excessive growths of others. Revolutions and counter-revolutions, springing from hatred of tyranny or caused by revengeful violence, gave to society movements like the vibrations of a spring, and it was long before a condition of stable equilibrium was reached. They have taught that mere change is not reform; that all results must be tested by experience; that a balance of interests and of power is the most salutary, and that rounded and well-ripened fruit is the most wholesome food for men whose appetites are healthy and not cannibalistic. They have taught us that derangement—whether physical, mental, political, economic or moral—is abnormal and hence insane. It is appropriate to this occasion to review the aspects of the slow but steady growths of English and American Constitutional Govern-

ment, and of federal and imperial systems, because they reflect the shadows of coming events. My theme is—*Heralds of a World Democracy: the English and American Revolutions.*

Broadly speaking, the English Revolution, which reached its climax in the abdication of James II in 1688, was over twelve hundred years in the making. It embraced several distinct epochs, some of which concerned the rights of individuals, and others involved the genesis and distribution of political power or sovereignty. The lines of development were according to methods peculiarly British, growing out of occasion and emergency. It was the practical need of the moment which determined what was done, not any theoretical conception of the end to be reached. It was precisely the method of growth of the common law. Results were based upon experience and precedents. Custom dominated, abstractions played but a small part, and political philosophy did not exist until the time was ripe for dealing with definitely established social phenomena. It was not until far into the fifteenth century that a political philosopher arose.

As to the Anglo-Saxon period (A. D. 450-1065) the most noticeable conditions were these: There was no such thing as a general rule of law in England. The Saxon dooms were the only public criminal codes. Such rules as bore the semblance of law were local, circumscribed, various in character and detail and often conflicting, lacking uniformity, universality, continuousness and impartiality. There was much litigation in the shire motes and county courts, but there was no conception of a State as we now understand it. Even Alfred the Great was not King of all England. There was no public or common weal. There was no King's peace, protecting all alike. The King's peace protected only the members of his own household. There was, however, and this is the marked feature, particularly in the latter part of the period, a definite conception of the individual. Every man had his price or value according to his station in life, and every part of his body, however minute, had its value nicely adjusted to a scale or tariff of compensation. In the laws of Alfred the Great there are thirty-six instances of offences against the person stated with particularity, from head wounds, hair wounds, ear wounds, eye wounds, nose wounds,

arm wounds, hand wounds, nail wounds, leg wounds, belly wounds, and rib wounds to the rupture of great sinews, small sinews and the tendons of the neck. All these were separately priced, and as a man's station in life rose, the price rose also. The worth of a thane was six times that of a mere freeman. The *werigild* was the price or value of a man killed and must be paid to his kinsmen; the *bote* was the compensation to the injured party; the *wite* was the fine or penalty paid to the King for the loss of a man. The Saxon law of *frank-pledge* for good conduct on the part of neighbors, the liability of neighbors as pledgors of good conduct, the establishment of *county courts* and *hundred courts*, "bringing justice to every man's door," as was long afterwards said by Blackstone, was simply Alfred's way of enforcing the Ten Commandments and the Golden Rule, all of which he expressly reenacted. He applied them locally, because he saw and thought locally, and judged of their consequence locally. Of course, a bundle of families made a tithing, a bundle of tithings made a hundred, a bundle of hundreds made a county or shire, a bundle of shires made a kingdom, and a bundle of kingdoms made a realm, in time to be coterminous with England. But in our contemplation of society at this time we must deal with units, and the units were men, and these men had rights to personal liberty, to personal security, to their limbs, their bodies and their strength. In short, the value, the inestimable and indestructible value of the Anglo-Saxon period, vaguely described under the shelter of the names of Alfred the Great and Edward the Confessor, was that during a period of almost seven hundred years on the heels of the withdrawal of the Romans, following the landing of Hengist, and extending through centuries of local strife, of seething disorder, of "battles between kites and crows," as John Milton called them, until "the mailed fist" of the Norman fell, the great, strong principle of a personal liberty of the citizen was born and matured into manhood, a manhood young, crude, undisciplined and raw, but so irrepressibly sturdy, vital and uplifting that nothing could suppress it, and it finally upthrust itself through the heavy crust of Norman despotism to play a permanent and immortal part in the formation of English institutions of later days.

The second period (A. D. 1065-1215) introduced a new element and was chiefly marked by the centralization of royal power. While the battle of Hastings proved sufficient for the military conquest of the Anglo-Saxons, the Norman Conqueror acted wisely. He made no changes in existing local institutions dear to the Saxons, but availed himself of their primitive feudalism to superimpose a feudalism of the most pronounced type. He surveyed the lands of the Kingdom for the purpose of taxation and subinfeudation, the results of which appear in the celebrated Domesday Book and he bound the barons by an elaborate system of tenures, the main features of which were designed to support the military power of the throne. William Rufus acted harshly and snatched at every opportunity to increase his power. So much so, that when Henry I was crowned, he was obliged by clamor to restore the laws of Edward the Confessor, to protect the Church from exaction, to grant a Charter of Privileges to the City of London, and to summarize the rights of the Crown. Henry II proved to be the most sagacious and the most successful of administrators in consolidating the justice of the Kingdom. He reached the counties, and controlled the baronial and manor courts by sending his justices out upon circuits to hold the assizes and to hear appeals or to try removals. His method is plainly to be seen in the pages of the first systematic treatise that we have upon English law, written about the year 1185, the work of Ranulphus de Glanvill, the Chief Justiciar. By a system of writs, issuing from the Curia Regis, an examination of eighty-six of which will show that they constitute to this day the backbone of English and even American remedial procedure, he drew into the King's Courts either originally or by appeal or by removal the judicial business of the Kingdom. This was an effective assault upon the independence of the feudal courts of the baronies. At the same time by an expansion of the exchequer he obtained control of all fiscal matters. The King became the strongest element in the state, and this as the result, not merely of personal qualities, but of an institutional system which gave the throne control of every freeholder in the land. The development of the regal power from the petty chieftianship of a tribe, through all the stages of leadership involving military, judicial, police, fiscal and ecclesiastical supremacy, supported by the pride,

ambition, avarice and power of a Norman duke, into the full-blown authority of an Anglo-Norman King, constituted, as the learned Professor Rudolph Geist has declared, "the most magnificent civil creation of the Middle Ages." But, if the law were kept, the royal power could only be exercised through the processes of law. This too is apparent in the pages of Glanvill. From the language of the writs, both of summons and of execution; from the elaborate system of *essoins* which effectively guarded the rights of defendants against summary judgments; from the nature and character of the *essoins*, which laid the foundation for our own practice as to opening judgments by default, or granting stays of execution; from the care so sedulously exercised to prevent any one from being thrown until he had had his day in court, there breathes as from the very lungs of the system the big spirit of fairness so characteristic of British justice.

The third period (A. D. 1200-1300) opens with the inevitable conflict between the spirit of personal liberty, nurtured by a liberal judicial establishment, and the rapacity of the Crown. King John, "the ablest but most ruthless of the Angevins," was mean, cruel, crafty, treacherous, perjured, murderous and morally flagitious. His conduct, persisted in for fifteen years, produced a crisis which united all the elements of opposition to absolutism. The counter forces to the King were the Church, the barons, the freeholders, the townspeople, the merchants and the landless freemen—the *liberi homines*. John's quarrel with the Pope, the interdict of his Kingdom, and his excommunication had absolved his subjects from their oaths of allegiance. Hence the insurgency of the archbishops, bishops and abbots. The military knights, whose dignity and sensitiveness to honor had been greatly strengthened by the Crusades, were aroused by arbitrary scutages and income taxes, which the hungry exchequer pressed through the county sheriffs to unheard-of injustices. The wives and daughters of royal vassals were the prey of the King's personal licentiousness. The market towns, seaports, and the City of London were subjected to amerciaments and tolls. The judges were servile and corrupt and sustained barefaced and venal assaults upon the administration of justice. Inordinate fines were exacted of the feudal rights to wardship, marriage, alienation, offices, franchises, liberties and trade. The King was

paid for his favor, protection and aid, for the remission of his anger, or for his direct interference in having proceedings speeded or judgments delayed, the parties sometimes outbidding each other. The Pipe Rolls, as digested by Madox in his *History of the Exchequer*, disclose shocking extortions. The courts were closed for long periods of time, or suitors were kept trailing over the Kingdom in pursuit of a wandering King. Finally, the disgraceful loss in Normandy of all the territory ruled by his proud progenitors made John so hateful and intolerable a tyrant that churchmen and barons, deeply stirred by common wrongs and a common shame, rose in a common defence of their feudal and legal rights and Magna Charta was the result. It was the sober, moral earnestness, the toughness of the Saxon nationality blended with the high spirit and brilliancy of the Norman, that saved England's freedom.

Magna Charta contained nothing new or revolutionary. In repelling a charge against it of obscure birth, a quaint old writer says: "It was born with a grey beard, for it had existed in John's great-grandfather's day." It was a restoration of ancient privileges. It was a redress of grievances, but not one hastily extemporized. Its terms had long been under discussion between Stephen Langton and the King. Its substance was derived from the so-called Laws of Henry I, embodying the laws and customs of Edward the Confessor and the imprescriptible rights of the Anglo-Saxons. Its form was that of a feudal pact based on the mutual obligations of feudal protection and fealty. Its sanction was in the appointment of a representative body of twenty-five barons, authorized to organize the resistance of the Kingdom in case of a royal breach of faith. Its provisions were aimed at limitations of the feudal military power viewed chiefly from the financial side; at legal limitations of judicial power; of the police power, and of arbitrary taxation. Its feudal features have been inurned with the Angevins and the Plantagenets; but its noble and striking provisions that the courts should be open, its denunciations of arbitrary imprisonments, of condemnations of individuals or property without due process of law, its prohibition of sales, denials or delays of justice, and of the deprivation of trial by one's peers have become a part of the text of English and American constitutional freedom. Let no supersensitive critic

sneer at the barons as selfish and narrow-minded because they acted for their class and not for the common people. As well attempt to depreciate the parable of the Good Samaritan because there was but one who could broadly answer the question, "Who is my neighbor?" As well ignore the beauty of the Sermon on the Mount because the world was then so small. As well criticize Franklin at the Albany Convention because he did not anticipate the Declaration of Independence, or the Constitution of the United States, or even criticize the Framers of the Constitution themselves because they did not foresee the then undreamed-of glory and power of forty-eight states with their interstate commerce and their foreign relationships. The glory of Magna Charta, as is the case with all organic charts of liberty, was its potential value which made its principles applicable to new conditions as they arose. Doubtless the barons thought not at all of the effect upon the future of what they did that day, but the principle had been born that the law was above the King; a precedent had been established that the King could be compelled to keep his part of the feudal compact. It was the first step towards a limited monarchy.

"The Great Charter," as Stubbs concisely says, "closes one epoch and begins another." This paradox is explained by the repudiation of his hand and seal by King John on the ground of duress, and the consequent republication and confirmation of the Charter by Henry III in 1227, when he attained his majority. With this date we enter a fourth period (A. D. 1227-1300), that of the thirteenth century, which has been acclaimed by philosophers, historians and scholars as "the greatest of centuries." It was a century of origins, when strange forces began to stir and upheave the surface of society to higher levels and broader outlooks. It saw the birth of the English nation and of the English language, Saxon and Norman having blended in the formation of a new and virile race. It saw the career of Simon de Montfort, the first of the great agitators of reform. It saw much blood-letting in the War of the Barons, the growing pains of a giant. It was a century of stupendous organizing statutes. It saw those of Westminster, of Quia Emptores, of Mortmain, of Statutes Merchant and Statutes Staple, of De Consimile Casu and of Elegit. It saw the reorganization of the Courts of King's Bench,

Common Pleas and Exchequer upon a basis which remained practically unchanged until 1873. It saw the first of the Year Books, that noble line of reports which exists unbroken until the reign of Henry VIII, of whose merits Sir Matthew Hale, with unconscious humor, said, "They are very good but very brief: either the judges then spoke less, or the reporters were not so ready-handed as to take all they said." It saw the production of the noblest work upon the common law—the Treatise of Bracton, which swayed the courts until Lord Coke's day. It saw the glory of Edward I, "Our English Justinian," for, as Hale wrote four hundred years later, "the laws did never in any one age receive so great and sudden an advancement, nay, I think I may safely say, all the ages since his time have not done so much in reference to the orderly settling and establishing of the distributive justice of this Kingdom." And chiefly, it saw the birth of the House of Commons.

The parent stock of the modern Parliament was not the remote Anglo-Saxon Witenagemote or Council of Wise Men, but the Norman Curia Regis, a national but purely feudal assembly of barons, bishops and the King's household officers, uniting executive, administrative, advisory, fiscal, judicial and legislative powers which in the course of time split into the Great Council, meeting occasionally, and the Small Council, meeting frequently, both in time again to split, as the differentiation of functions progressed, into the Exchequer, the justices in Eyre, the Courts, both of common law and of equity, the Star Chamber, and the Privy Council, the House of Lords and the House of Commons, the Cabinet and the separate functions of the Throne. The representative element first appeared in the thirteenth century as the result of inviting to the advisory meetings of the Great Council those who were neither barons nor bishops but men of position and knowledge, merchants and traders, city and townspeople, to give information upon matters of consequence. Not being a constituent part of the Council the visitors naturally drew off by themselves, but in 1265 Simon de Montfort, to strengthen his hands, introduced into the Council deputies from boroughs and cities, and finally in 1295 Edward I called together what has become known as the Model Parliament, model in the sense that

the burgesses constituted a third estate, and with the nobles and clergy rounded out the Councils of the King.

The fifth period (A. D. 1300-1500) witnessed the steady rise of the powers of Parliament, particularly of the Commons, aided largely in development by the moneyed needs of Edward II and Edward III in waging foreign wars, and nurtured, strange to say, by the long and furious strife of the War of the Roses, the explanation being that the contests between the Houses of York and Lancaster were concerned with a right of succession to the Throne and not with contests between sovereign and people. During the fourteenth century much was done to secure the control by Parliament over the revenues from taxation. King John had had frequent quarrels with his nobles over scutages. Magna Charta had provided that no scutages should be called for by the King unless with the consent of the Great Council. This clause was omitted in the Confirmation of the Charter by Henry III, perhaps, as has been suggested by Professor Adams, because of the difficulty of determining exactly the nature of scutages. But when Edward I, pressed by the necessities of war with France and Scotland at the same time, endeavored to tax without the consent of his Council then shaping itself into Parliament, he was obliged to declare in his Confirmation of the Great Charter: "We have granted for us and our heirs . . . to all the commonalty of the land that for no business from henceforth will we take such manner of aids, tasks, nor prises, but by the common consent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." The reservation caused debate, bloodshed and revolution three hundred and forty years later, but the principle had been fixed of no taxation without the consent of the taxed. The next advance was in securing for the Commons the right to participate in every act of legislation, which was done by the enlargement of the right to petition the Throne for a redress of grievances, and a gradual change in the form of bills. This was followed by a supervision of royal expenditures of moneys already raised by tax as a condition of consent to further exactions, which in time led to a control of appropriations. The fifteenth century saw the establishment of the privileges of Parliament, freedom of debate, freedom of the members from arrest, the right of the

Commons to originate taxation, to determine the qualifications of members, the discipline and punishment of members and officers of state, and, in part the regulation of the suffrage. All these were buttressed by the great power of impeachment which in substance as well as in process was a criminal trial. Between A. D. 1283 and 1494 there were twenty-one impeachment trials, among which we note the cases of earls, archbishops, chancellors, chief justices and judges, and even of a King, Richard II, who having dexterously renounced the Crown, was formally deposed by action of the Lords upon thirty-three articles presented in the form of charges.

The sixth period (A. D. 1500-1600), under the iron rule of the Tudors, was one of marked reaction. Henry VII, Henry VIII, Philip and Mary and Elizabeth, were all strong monarchs, but they were aided greatly in their absolutism by the menace of foreign power—in affairs of Church and state. The Pope and the Spanish Armada, while open enemies of England, were unconscious allies of the Crown.

Then came a seventh period (A. D. 1600-1650), which for want of a better name may be called the period of philosophical discussion, having its roots in the past but destined to affect the remotest future. An argumentative issue was raised between King and people and for fifty years was conducted bloodlessly. To appreciate its scope and to mark how the contending forces arrayed themselves for the final struggle, we must glance backward. Bracton, writing in the reign of Henry III, about the year 1260, has two striking passages: "But the King has a superior, for instance, God. Likewise the law, through which he has been made King. Likewise he has his court, namely, counts, barons, because the counts are so-called, as being as it were, the associates of the King, and he who has an associate has a master, and therefore if the King be without a bridle, that is without law, they ought to put a bridle upon him." (Bracton Lib. ii, Cap. 16, s 34.) Again: "For he is called King (*rex*) from ruling (*regendo*) well, and not from reigning (*regnando*), for he is King whilst he rules well, and a tyrant when he oppresses with violent dominion the people entrusted to him. Let him therefore temper his power by law, which is the bridle of power, that he live according to laws, because a human law has sanctioned

that laws bind the law giver himself." (*Ibid.*, Lib. iii, Cap. 9, s. 3.) These words of Bracton were recalled by the law writers of later days, and applied to a situation of which he little dreamed.

Sir John Fortescue, who had been chief justice and chancellor, in his book *De Laudibus Legum Angliae*, written early in the reign of Edward IV (1465), had said of the King: "He can neither make any alteration or change in the laws of the realm without the consent of his subjects, nor burden them against their wills with strange impositions. . . . As the head of the body natural cannot change its nerves and sinews, cannot deny to the several parts their proper energy, their due proportion and aliment of blood, neither can a King, who is the head of the body politic, change the laws thereof, nor take away from the people what is theirs by right, against their consent." Shortly before this time the then recent invention of printing was introduced into England, followed by the discovery of America, and a vision of new worlds arose. The intellect of England awoke. Sir Thomas More wrote his *Utopia*, descriptive of an ideal state, based on the *Republic* of Plato. Sir Thomas Smith, the famous ambassador to France and one of the Secretaries of State of Queen Elizabeth, wrote his *De Republica Anglorum*, a work of a very different kind; in his own words: "not in that sort as Plato made his commonwealth . . . nor as Syr Thomas More his Utopia, being feigned commonwealths, such as never was nor never shall be, vaine imaginations, phantasies of philosophers to occupie the time and to exercise their wittes; but so as Englande standeth and is governed at this day the xxviii of March Anno 1565." In his second book he said: "The most high and absolute power of the realme of Englande, consisteth in the Parliament. . . . And to be short, all that ever the people of Rome might do either in *Centuriatis comitiis* or *tributis* the same may be done by the parliament of Englande, which representeth and hath the power of the whole realme both the head and the bodie. For everie Englishman is entitled to bee there present, either in person or by procuration and attornies, of what prehiminence, state dignitie or qualitie soever he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie man's consent." Sir Frederick Pollock has declared that not even John Locke,

one hundred years later, was "so precise on the supreme authority of Parliament," a view which has been contested by Alston. But however this may be, the descriptions which Smith gives of the manner of summoning Parliament, of the composition of both the Upper and Lower House, the form of holding the sessions, and the method of procedure indicate a highly representative popular body, while his statement of the rules governing debate and points of order is startlingly like the earliest edition of Cushing's Manual.

Then came Richard Hooker, whose *Laws of Ecclesiastical Polity* appeared in 1594. He sought to show by reason the basis of a social compact. "In a word," he said, "all public rule, of what kind soever, evidently seemeth to have arisen from deliberate advise, consultation and composition between men, judging it convenient and behoveful." He confined his views to a Church establishment, but it was soon perceived that they were equally applicable to affairs of state. Thomas Hobbes strove in his *Leviathan* to define the limits of authority. Like Hooker, he founded government upon a social compact among men by nature equal, each of them giving up to the central power some part of his private right, in order that each might be protected by the strength of all, but he diverged widely from Hooker at the next stage of the argument. Hooker had said that if the government, established by compact, should fail to fulfil its purpose, those who established it might end and reshape it. Hobbes contended that the authority, when once established, became absolute. The grant was irrevocable. There was no power to take back what had once been given. Absolute government was the form thus established; and this form was best. The state was a great body politic, as *Leviathan* was a great body natural and could be well ruled only when all members were subject to the control of a single head. In the Church and in the state there should be one directing will, and that the King's. It was for the King to say what doctrines are fit and to be taught the subject.

James I was a pragmatist egotist, steeped to the lips in Tudor doctrine, but advancing theoretically far beyond it. With the Tudors an absolute monarchy had meant a sovereignty or rule complete in itself and independent of all foreign or papal influence. James, in his book on "*The True Law of Free Mon-*

archy," announced that "although a good King will form his actions according to law, yet he is not bound thereto, but of his own will and for example giving to his subjects." He insisted that a monarch was entitled to "freedom from all control by law, irresponsibility to anything but his own royal will." In a speech in the Star Chamber he declared: "As it is atheism and blasphemy to dispute what God can do, so it is presumption and a high contempt in a subject to dispute what a King can do, or to say that a King cannot do this or that." He reduced the doctrine of the divine right of kings to the Latin maxim, *A Deo Rex, a rege lex*—From God, the King; from the King, the law.

With the issue thus sharply raised, Charles I came to the throne, dangerously poisoned by the doctrine of his father. He soon became involved in quarrels with his Parliaments over his foreign, domestic and ecclesiastical policies. He was unhappy in selecting as ministers the notorious Duke of Buckingham and Archbishop Laud. He was desperate in his expedients for raising money, and was misled by the advice of a weak attorney general, Sir William Noy, as to the meaning and extent of the saving clause in the statute of Edward I as to raising taxes. He attempted levies without parliamentary consent, dissolved a refractory body, and ruled for eleven years without a Parliament, levying tonnage and poundage and ship money. He removed judges from the Bench who opposed his views, imprisoning them in the Tower or driving them into exile, and then forced by necessity to reconvene a Parliament, upon a fresh quarrel he attempted to seize the five most obnoxious members. He was fought by the mighty master of the common law, Sir Edward Coke, an octogenarian, who drafted the Petition of Right, by John Selden, the most learned of legal antiquarians, by Sir John Eliot, the purest of patriots, and by the fervent John Pym, the most eloquent of Commoners. In the courts he was faced by the dauntless John Hampden, who secured from a Bench of twelve judges five dissenting opinions as to the illegality of ship money. In battle he was fought by Cromwell at Naseby and Marston Moor, and then the tragic scene was closed by a royal death upon the scaffold.

But the Great Debate did not end. Harrington published his *Oceana*, arguing profoundly for a republic, basing dominion upon

the balance of property, and securing an expression of popular will by ballot. Sir William Temple in an "Essay Upon the Origin and Nature of Government" gave preference to the family or patriarchal scheme. Archbishop Usher wrote in defence of Charles I, in his "Power of the Prince and the Obedience of the Subject." All through the days of Cromwell and of the Restoration under Charles II the fierce discussion ran. There were pamphlets, political, polemical, philosophical and historical. There were Vindications of the King, Vindications of the Liberties of England, Reflexes upon Government, Exposures of Errors and Abuses, Dialogues concerning the Rights and Privileges of Englishmen and Usurped Powers; there were books upon the Popish Plots, Hellish Plots, Whiggish Plots; The Hidden Works of Darkness, the Triumphs of Justice, the Triumphs of God's Revenge. There were pamphlets and broadsides by the thousand—the catalogues of the British Museum giving the names and dates of upwards of thirty thousand. But the great names in the lists of champions are those of John Milton, who published his *Areopagitica, or Defence of the Liberty of Unlicensed Printing*; of Algernon Sydney, whose *Discourses Upon Government* brought him to the scaffold, and of John Selden, the author of three mighty folios in vellum, who said: "A King is a thing men make for their own sakes. . . . They grant him certain high powers and privileges, but it is upon condition that he should guard their liberties and administer their laws. The moment he neglects either, he has broken the condition, and his privileges are forfeited." On the other side were numerous apologists and defenders of the King. The greatest of these was Sir Robert Filmer, whose *Patriarcha* made a prodigious stir. He assailed and ridiculed the social compact theory among men equal by nature. There never was a time, he argued, when men were equal. When there were only two in the world, one of them was master. When children were born, Adam was master over them. Authority was founded by God Himself in fatherhood. Out of fatherhood came Royalty; the Patriarch was King. Then arose John Locke, the man whose gestation can be traced for five hundred years, for whom England had been waiting, who turned in his vastly capacious mind the results of ancient and modern thought, and logically laid the basis of government in the

sovereignty of the people—the man whose relations to political philosophy are those of Lord Bacon to science, and of Shakespeare to literature, whose influence upon civilized states has been unlimited, the founder of the analytic philosophy of mind, the oracle of the democracies that were and are to be. The Great Debate was closed. All that followed—the Habeas Corpus Act, the abdication of James II, the Bill of Rights, and the Settlement of the Crown—were but logical sequences; and all that has since been done—the Reforms of the Suffrage, the rearrangement of the courts, the evolution of the Cabinet system, the responsibility of ministries to the Commons, the shrinking in the power of the House of Lords, and the protection of labor, the poor and the aged—are but administrative adaptations of the principles secured by the English Revolution.

The foregoing is but the barest sketch of the successive periods of development resulting in the English Revolution. These "truths are told as happy prologues to the swelling act of the imperial theme," of the part played by America in the drama of Democracy. It was fortunate that the earliest of the English colonies in America were planted during the period of the Great Debate. The settlement at Jamestown, Virginia, in 1606, was six years after the accession of James I to the throne. The settlement at Plymouth, Massachusetts, in 1620, was precisely five years before Charles I was crowned. Pennsylvania, which, under Penn, was the last to be established of the old Thirteen Colonies, with the sole exception of Georgia, received its Charter from Charles II, and the remaining nine colonies were founded during the Stuart period, interrupted by the interregnum under Cromwell, which lasted but little more than eleven years. Hence it was, that owing to their distance from the mother country across the sea, the English colonists, while carrying with them all the rights and all the proud traditions of their race, were free from the distractions which rent their old home, and were able on the soil of an untrammelled continent to work out their own solutions of the problems of self-government. In analyzing the complex result, it is most convenient to consider the matter ethnologically, geographically and politically.

Ethnologically, the American people is not aboriginal. It is of European origin, chiefly English, and, notwithstanding the

extent of foreign immigration, still remains so. The race displayed a genius for colonization, vigor, enterprize, and capacity for self-government. With the great stream of English blood were mingled small but noble tributaries—Dutch, German, French, Swiss, Swedish, Scotch, Welsh, Irish and Italian. All religious sects were represented—Puritans, Pilgrims, Brownists, Congregationalists or Independents, Quakers, Huguenots, Anabaptists, Episcopalians, Roman Catholics, Lutherans, Moravians, Mennonites, Amish, Dunkers, Schwenkfelders and Presbyterians. All were the children of revolution and persecution. Among the Puritans were several of the regicides and Sir Harry Vane, and Roger Williams, a pioneer of religious liberty. Among the Dutch were the sons of those who from the walls of starving Leyden had proclaimed to the ferocious Spaniard that when the leaves of their trees had gone they would feed on their left arms and preserve their right to defend their homes and their shrines. Among the Quakers was the gentle and learned scholar Francis Daniel Pastorius and the high-minded William Penn; among the Germans were the refugees from the scourged Palatinate; among the French were those who had fled from the terrors which followed the revocation of the Edict of Nantes; among the Swedes were soldiers of Gustavus Adolphus; among the Roman Catholics was George Calvert, the protector of religious toleration; among the Welsh was the fiery David Lloyd, the first of American Commoners; among the Irish was the learned James Logan, and among the Dissenters was Joseph Priestley. The blood of agonized sects and nations was mingled by the cunning alchemy of destiny in the alembic of America to be distilled by the fires of our Revolution into the most precious elixir of the ages.

The physical environment of the colonists produced a marked effect upon character. Three thousand miles of ocean, unconquered by steam, on the one hand; three thousand miles of unbroken forests, prairies and mountains on the other, the intervening coast line broken by broad rivers, expansive bays and desolate swamps, with two hundred years of solitude begat self-reliance. That trait detached the colonist from the Old World. He learned to love the New. Churls, thralls, vassals, serfs, censors of the press, stakes, racks, thumb-screws, inquisitorial tortures, the Tower, the Bastile, the Lions' Mouths of Venice—had all been left behind; liberty, justice and God were companions in

the wilderness. The new land was his land! He loved its hills, its valleys and its streams; the air he breathed had never been tainted by the scent of human sacrifice; the ground he trod was unburdened with the weight of a feudal prison; the murmur of the sea, the voices of the woods, the eagle soaring to the clouds reminded him that he was free. As the seasons revolved and harvests rewarded his toil; as houses built by his own hands became a part of his wealth; as his door sills were sprinkled with the blood of Indian massacres; as plans of public improvement projected by himself or his neighbors contributed to his comfort and safety; as laws to which he was a party appeared upon the statute book; as magistrates, chosen by himself, gave force and expression to the public will, he felt himself to be an active agent in the work of state-building, an important factor in the problem of self-government. He could not then deem it an extravagance of thought or speech when told by our own Declaration of Independence that "all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." And when it was attempted to wrest from him his hard won rights, to oppress his commerce, to tax him without his consent, to coerce obedience at the point of the bayonet, he sprang to arms, and staked life, fortune and honor for the cause of Democracy. Such, it seems to me, is a simple analysis of the feelings which prompted and sustained the American Revolution.

The final phase of our subject is political. It is one of evolution. It passes from colonization to defensive leagues, to Continentalism, to Confederation, to triumphant Nationalism. Fortunate it was that the colonies were planted separately, for it permitted thirteen embryo states to develop nurseries of citizenship. Although of a common origin and owing a common allegiance, they had no direct political connection with each other; each in a limited sense being sovereign within its own territory. In respect to interior polity there were three classes: Provincial, Proprietary and Charter governments. New Hampshire, New York, New Jersey, Virginia, the Carolinas and Georgia were in the first class; Maryland, Pennsylvania and Delaware in the second; and Massachusetts, Connecticut and Rhode Island in the

third. In the *first class*, the King appointed the Governor and his Council, but the Commissions contained authority to convene a general assembly of representatives of freeholders and planters, with the power of making local laws and ordinances not repugnant to the laws of England. The governors had the power, with the advice of the Council, to establish courts, to appoint judges and other magistrates, while appeals lay to the King in Council from the decisions of the highest provincial tribunals. The *proprietary* governments were in the nature of feudatory principalities. The governors were appointed by the proprietaries, and legislative assemblies, popular in character, were called under their authority. There was power to appoint judges, but, with the exception of Maryland, there was the supervision of the Crown in the approval of statutes, and the hearing of appeals. The *charter* governments, while viewed by some as civil corporations, were rather political establishments possessing the general powers of government, dependent indeed upon the Crown but actively exercising the powers of legislation and taxation. Thrown largely upon their own resources and left largely to their own devices, it is interesting to note how several of the colonies reverted to ancient types. The unit of local organization in New England was the town, resembling in its town meeting the *tun-mote* of Anglo-Saxon days. In the Southern colonies the unit was the county, subdivided into parishes. In Maryland there were manors with courts baron and courts leet as in early Norman days. In New York there was a manorial system, Dutch in its origin, but perpetuated under English forms. In Delaware the counties were divided into hundreds as in Alfred the Great's day. In Pennsylvania there was a highly developed popular system, with special charters to Philadelphia and other leading towns. Constant quarrels arose between the proprietary governors and the Assemblies over taxes, quit rents and conditional grants of money, reproducing in miniature the strife between King and Parliament at home, and anticipatory of the final struggle between the United Colonies and George III. At various times several of the Charters were vacated upon *scire facias*, or were forcibly taken by the Crown. Under pressure they were restored with but few substantial changes. At all times there was a steady insistence that in matters of taxation the colonies should be severely let alone. This claim was extended to matters of trade, and was finally

rested upon the famous phrase, "No taxation without representation." Such were the fruits of local self-government.

During the same period the pressure of outside forces slowly drove the colonies into union.

The earliest effort at combination was that of 1643, known as the New England Confederation, prompted by the need of protection against the Dutch and the Indians. It embraced Massachusetts Bay, Plymouth, Connecticut and New Haven. A good principle was at its bottom, but noble as were the aims of those who handled it, they had not yet attained to sufficient breadth of view to apply it even to the whole of New England. In 1697, William Penn presented to the London Board of Trade a plan for the union of the colonies, providing for a "Congress" of deputies, who should meet at least once a year in time of war, or once in two years in time of peace, and resolve upon matters touching the general safety. The plan was characteristic of Penn's breadth of view. The next year D'Avenant opposed the plan of Penn and submitted one of his own. In 1701 a criticism of both plans was made by a "Virginian." In the same year, Robert Livingston of New York suggested two military sections, and also in the same year the Earl of Stair devised a plan referred to by Bancroft. In 1721, David Coxe, a citizen of Philadelphia, proposed with remarkable fullness a scheme for resisting the dangers of French encroachment and a possible invasion of the colonies. This was followed by a new plan of the Lords of Trade, alluded to in Keith's "Miscellanies," and by one of Archibald Kennedy in 1751. In 1754, Franklin presented to the Commissioners from seven colonies, who met at Albany, his celebrated plan of union, "which was rejected," it has been said, "in America because it had too much of the prerogative, and in England because it was too democratic." In 1765, the Stamp Act Congress, "the Day Star of American Union," met in New York, and proclaimed a Declaration of Rights, of which Mr. Justice Story has observed that it contained "the best general summary of the rights and liberties asserted by all the colonies," in which the ground was finally taken that American liberties were founded on the general rights of Englishmen, and not on royal charters. Then came the Declaration of Rights and Non-Importation Agreement, promulgated by the First Continental Congress, which met in Philadelphia in 1774—"that memorable

league," as John Adams styled it, "which first expressed the sovereign will of a free nation in America." Then followed in quick succession the Declaration of Independence of July 1776, and the Articles of Confederation, reported in 1777, but not ratified by the requisite number of states until 1781. The lamentable defects of these Articles led to the Annapolis Convention, and finally, to the Federal Convention which framed the Constitution of the United States. "The half-starved, limping government, moving upon crutches and tottering at every step," as Washington graphically described it, became strong, self-reliant and effective, chiefly because of the happy principle of making its action operate directly upon the citizens of every state as individuals instead of dealing with the states in their political capacities. Thus, stone by stone, was the nation built. The rights of democracy had been safe-guarded by an organized government. The citizen did not exist for the advantage of the state, the state existed for the benefit and protection of the citizen.

The fabric thus woven "on the roaring loom of Time," is of a texture and a pattern that can be made the ægis of the world. For a thousand years statesmen with a "knowledge of the seasons," have taken "occasion by the hand," and made "the bounds of freedom wider yet by shaping some august decree." As a political *intelligence* served by appropriate organs our Constitution should be studied in the spirit in which Copernicus divined his theory of the planetary system. In truth, so far as the thoughts of mortals can approach the Divine mind, the architecture of our Constitution resembles that of the heavens, where states circle like planets about the Federal Constitution as a Central Sun. The grandest conception of the Constitution was the establishment of an independent tribunal with authority to settle differences between contending sovereignties without the spilling of a drop of blood, a thought which glorifies the Supreme Court of the United States. It embodies the climax of skill in the adjustment of a balance between centripetal and centrifugal forces. It will furnish a model to the nations for the peaceful adjustment of world-wide affairs. This will involve a consideration of those conditions of liberty which experience has shown to be of value in the organization of regulated freedom. Every code, system, league, constitution, charter, statute and treaty which has in the past contributed to the general welfare

of a people or nation will be brought under scrutiny and subjected to analysis. The political and ethical philosophies of all time will be laid under contribution; results will be tabulated; comparisons will be made; creeds will be re-stated; old principles will be reapplied; jurisdictions will be extended; partitions of sovereignty will be attempted, and new delegations of power will be invited, based on wise and unselfish concessions to the general good. There will be devised means of centralizing world-wide authority, and methods of enforcing the will of an emancipated humanity. The majestic scale upon which this work will be planned will be unprecedented; the interests involved will be international as well as domestic and national. The problem will concern the architecture and the construction of a Fortress of Freedom, which, while offering full room for the play of individualism, will serve as a buttress to the weakest against external and internal tyranny. There must be and there will be a House of Shelter against violence which will assure to human beings, wherever dwelling, the right to lead their own lives untouched by tyranny and unstained by blood.

But if it could be imagined by the reptile philosophers of the Kaiser, that a creed so vile as his, so heartless, so maniacal, so fetid and so deadly could escape damnation in the eyes of God and man; if it could be thought that Belgium, Serbia, Rumania, Armenia, Poland and even big, blind, staggering Russia could be forced to accept Kultur; if it could be foully fancied that saintly France, the shrine of Jeanne d'Arc, could be ravished, and Italy, the land of Columbus, of Gallileo, of Michael Angelo and Garibaldi, could be crucified; if it could be even conjectured that old England should be left to guard the seas alone, and that the United States of America would remain passive in these hours of cataclysmic agony, and stand a silent and impotent witness of the destruction of our inheritance, then would the hour have struck to call upon the Rocky Mountains and the flood of Niagara to cover our shame. In solemn and holy duty to ourselves and to our children, for the sake of humanity, in the fear of God, and in the love of freedom, we strike in defence of our altars and our shrines, in defence of our homes, our institutions, the graves of our ancestors, and the hopes of the future, and we will never cease to strike with all our strength until the powers of hell and darkness are vanquished by the powers of righteousness and light.

THE SAFEGUARD OF CIVIL LIBERTY IN JAPAN.

BY

HONORABLE TSUNEJIRO MIYAOKA,
OF THE BAR OF JAPAN.

The honor you have conferred upon me by inviting me to be your guest and to deliver an address before you today is regarded by the Bar of Japan as a tribute paid to it by a sister organization of older standing, and consequently of greater prestige. At the dinner given me by the members of that Bar on the eve of my departure, I was instructed by them to convey to you their cordial greetings and the assurance that they hope the day will not be far distant when they may have the pleasure of having one of you to be our guest and deliver an address before us.

The Constitution of Japan¹ provides among other things that the Japanese subjects may, according to qualifications, determined in laws or ordinances, be appointed to civil, or military, or any other public offices, equally; that Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law; that Japanese subjects shall have the liberty of abode and changing the same within the limits of law; that no Japanese subject shall be arrested, detained, tried or punished unless according to law; that no Japanese subject shall be deprived of his right of being tried by the judges determined by law; that except in cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent; that except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolable; that the right of property of every Japanese subject shall remain inviolable, subject to such provisions of law as may be enacted for public benefit; that Japanese subjects shall, within limits not prejudicial to peace and

¹ "The Constitution of Japan was promulgated by the late Emperor Mutsuhito on February 11, 1889, and took effect from November, 1890."

The Safeguard of Civil Liberty in Japan 605

order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief; that Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.² These guarantees would be of little value unless the Constitution itself provided for the machinery, legislative, executive, and judicial, whose duty it is to see to it that these guarantees are successfully carried out in practice.

The legislative power of Japan is vested in the Emperor and a bicameral legislature called the Imperial Diet. The Diet consists of an upper chamber known as the House of Peers and a lower chamber known as the House of Representatives. The upper chamber corresponds to the House of Lords, and the lower to the House of Commons in Great Britain.

Article 37 of the Constitution of Japan provides:

"Every law requires the consent of the Imperial Diet."

Article 62 of the same document provides, in effect, that the imposition of a new tax or a modification of the existing rate of any tax, except all such administrative fees as are in the nature of compensation for a special service rendered by a government official, shall be determined by law. The same article also provides that the raising of national loans and the contracting of other liabilities to the charge of *fiscus* (National Treasury) requires the consent of the Imperial Diet. Article 65 of the Constitution of Japan provides:

"The budget shall be first laid before the House of Representatives."

The time-honored adage of the British Constitution that the

² See Articles 19 to 29 of the Constitution of Japan.

The Constitution makes the reservation to the effect that the various guarantees are subject to the exercise of powers appertaining to the Emperor in times of war or in cases of a national emergency. When the Emperor declares a state of siege, there may be an entire or a partial suspension of those guarantees. It is the prerogative of the Crown to declare, in time of war or insurrection, a state of siege in any particular locality, or over the whole Empire. However, the Emperor himself is not authorized to determine how far the Constitutional guarantees of civil liberty may be suspended. The law provides the effect which the Imperial declaration of a state of siege shall have upon the enjoyment of civil liberty.

House of Commons holds the purse string is therefore worked out in practice in Japan. The Emperor is the chief executive as well as the Commander-in-Chief of the Army and Navy, but the English Constitutional principle that the "King can do no wrong" also finds its place in the Constitution of Japan, for it says "the Emperor is sacred and inviolable."^{*} The question remains "If the sovereign can do no wrong, who is responsible?" In the excellent address which he delivered at your meeting last year, Mr. Robert McNutt McElroy, of New Jersey, recalled the words used by William Pitt in the resignation he presented to King George the Third. That Minister of the Crown declared "I consider myself called to the post of Prime Minister by the people of England, to whom I consider myself responsible. I will not remain responsible for measures I am no longer allowed to guide."

The Constitution of Japan is silent as a sphinx when it comes to the question to whom the Ministers of State are held accountable. Article 55 of the Constitution merely declares

"The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.

"All laws, Imperial Ordinances, and Imperial Rescripts of whatever kind that relate to the affairs of State require the counter signature of a Minister of State."

If any law, ordinance, or a rescript is issued and made public by the Emperor over his own signature, but without the counter-signature of one or more Ministers of State, such law, ordinance or rescript is null and void. Reading Article 55 side by side with the declaration of Article 3 to the effect that "the Emperor is sacred and inviolable," there will be no doubt in the mind of an American jurist as to the party to whom the Ministers of State, collectively called the Cabinet, are accountable. Thus far it has been maintained in practice that the responsibility of the Cabinet Ministers is one owing to the Crown and not to the Imperial Diet. At acute stages of Japan's internal political struggle this point comes up perennially for debate in the House of Representatives; but manifestly it is a point on which men will differ according as they take conservative or liberal view of things.

^{*} Article 3 of the Constitution of Japan.

The Safeguard of Civil Liberty in Japan 607

Now that the great Emperor who gave a written Constitution to his people, as well as the majority of the great men who served him in the work, are no longer with us, many of the things that were thought and said at the Counsel table when the draft of the Constitution was examined, discussed and adopted, would never come to light. The Emperor Mutsuhito was so broad in his vision, and to his piercing eye the remote future was so near, that at times his Ministers of State failed to see what it was that prevented His Majesty from giving Imperial sanction to a measure recommended. To me Article 55 of the Constitution of Japan is more significant for what it omits to say than for what it mentions. Compare the first paragraph of Article 55 with Article 5, for example, which declares "the Emperor exercises the legislative power with the consent of the Imperial Diet"; or with Article 37 which says, "Every law requires the consent of the Imperial Diet." The language of the Japanese Constitution is so terse, so simple and so direct, that it is evidently a work of a group of men who lacked neither clearness of vision nor precision in the art of expressing thoughts. We shall probably do justice alike to the greatness of the Emperor, whom we now call by his posthumous title Meiji, as well as to the faithful devotion of his able Ministers, if we take the view that the first paragraph of Article 55 was purposely left a political sphinx. The transition of Japan from an absolute to a constitutional form of monarchy in 1890 was of course surrounded by many dangers.

The total collapse of Russia, as well as the partial success of the republican form of Government in China, are but reminders of a political wisdom which the world has known for ages. No vital change in the form of government can be adopted by a people without risk of the complete undermining of the reign of law. There is always a danger of the whole people running mad in the ecstasy of newly acquired liberty and in the consciousness of a newly vested power. To you who are so familiar with the growth of the jurisdiction of the Court of Chancery in England as well as in the British colonies on this continent, it is unnecessary for me to say that laws are modified not merely by acts of legislature, but are susceptible of change by interpretation. Nor is the reversal of an interpretation the sole prerogative of law courts. We see among us today familiar faces of many distinguished

jurists who at one time or another, as Attorneys General of the United States, or of one or another of the several states of the union, deliberately changed the course of administration of law, so far as the executive branches of the respective governments with which they were identified were concerned. Is it not reasonable to suppose that the Japanese nation, in its wisdom and in its own time, will solve its constitutional problem in a manner best adapted to its genius and the requirements of the age?

Article 57 of the Constitution of Japan provides that "The judicature shall be exercised by the courts of law, according to law, in the name of the Emperor" and that "The organization of the courts of law shall be determined by law." The Constitution further provides that the "Judge shall be appointed from among those who possess proper qualifications according to law and that no judge shall be deprived of his position unless by way of criminal sentence or disciplinary punishment, the rules of which shall be determined by law."⁴

1. PERSONAL LIBERTY.

As the most important of civil liberties let us take up first of all the question of protection accorded to persons, that is to say the question of arrest, detention, trial and punishment. This phase of the subject cannot be made intelligible without saying a few words regarding the Public Procurators and the Judges of Preliminary Examination. There are four grades of law courts in Japan apart from certain special courts such as the Administrative Court, the Maritime Court or the special jurisdiction of the Patent Office in matters relating to patents, trade marks, etc.⁵

⁴ See Article 58 of the Constitution of Japan. See also Law relating to the Organization of Law Courts, which was promulgated on February 10, 1890, and took effect from November 1, 1890.

⁵ The lowest court is called the Local Court. The one above it is the District Court. Then comes the Courts of Appeal, and above all there is one Court of Cassation which is the highest tribunal of the Empire and unifies the interpretation of laws both in criminal and civil matters. Each of the courts except the lowest has one or more civil and criminal departments. In the lowest court, if there are two or more judges, the work may be divided among the judges in accordance with the rules laid down by the Minister of State

The Safeguard of Civil Liberty in Japan 609

To every court is attached an office of the Public Procurators. The Public Procurators are regarded as one body. It is a body of State Attorneys at the head of which stands the Attorney General who acts as the Chief Procurator of the Court of Cassation and has under his control all the other State Attorneys. It is this body of State Attorneys which conducts prosecutions in behalf of the state. In every District Court there are one or more judges of Preliminary Examination. They are named by the Ministers of Justice from among the Judges of the Court in pursuance of a provision contained in the law of the Organization of Law Courts.* It is this system of Preliminary Examination that has so often been held up by the enemies of Japan as the machinery for the oppression of her people. This is no more nor less than an examination by the *juge d'instruction* in France, and

for Justice, so that it is quite possible to have one judge attending to criminal matters and another judge attending to civil matters only.

The jurisdiction of the lowest court in criminal matters is limited; firstly, to crimes punishable with imprisonment not exceeding 30 days or fine not exceeding 20 yen, which is equivalent to 10 dollars United States currency. (Japan is a gold standard country and its currency is on decimal system. Yen, which is the standard unit, is equivalent to 50 cents of United States currency, though at present the rate of exchange is slightly against the United States.) Secondly, the criminal jurisdiction of a local court is limited to such cases only as have not been submitted to Preliminary Examination. Whether a case shall be submitted to Preliminary Examination or not is determined by the following rules. If the crime with which the defendant is charged is one that makes him liable to capital punishment or imprisonment for life, or if the prescribed minimum term of imprisonment is one year or more, then the Public Procurator must ask for a Preliminary Examination. It is only when the Judge of the Preliminary Examination decides that the case shall go to trial, that the Public Procurator is permitted to bring the case before the court in the usual way. In cases where, as the result of investigation undertaken by him, the Public Procurator is satisfied that the offense is one for which the minimum term of imprisonment is less than one year, with or without hard labor, then in such case it is optional for him either to ask for Preliminary Examination or to submit the case forthwith to the public trial of the District Court to which he is attached.

* See Article 21 of Law of Organization of Law Courts, promulgated as Law No. 6 on February 10, 1890.

serves precisely the same purpose as an indictment before a grand jury in this country.

Just as a defendant is discharged, under the Anglo-American system, if the grand jury does not find a true bill against him, so under Franco-Japanese system a person is not subjected to the indignity of a public trial on an alleged offense of a serious character unless and until a Judge of Preliminary Examination has thoroughly examined the case and pronounced his judgment that there is a *prima facie* case against the defendant.⁷

⁷ A Judge of Preliminary Examination is not authorized to issue a warrant of arrest against the defendant forthwith upon the filing of a prosecution by a Public Procurator except in cases where the defendant has no determined place of abode, where there is danger of his escape or his tampering with the evidence of his guilt, or where the defendant is charged with the attempt of a criminal act, or with duress or intimidation and there is actual danger of his further committing the offense. Except in such cases the Judge of Preliminary Examination must confine himself to the issue of a writ of summons, allowing at least 24 hours between the service of the writ and the time the defendant is required to appear before the judge. The judge is further interdicted from issuing a writ of arrest until and after he has personally examined the defendant and is satisfied that the latter is charged with a crime which upon conviction makes him liable at least to a penalty of imprisonment. (See Articles 69, 72 and 75 of the Code of Criminal Procedure of Japan.) The Code of Criminal Procedure further provides that whenever and as soon as a Judge of Preliminary Examination is persuaded that the act with which the defendant is charged does not make him liable to imprisonment with or without hard labor or any heavier penalty than that, he must forthwith cancel the writ of detention and set the prisoner free. (Article 86.) The law requires the Judge of Preliminary Examination to begin the investigation of the case submitted to him by a personal examination of the defendant himself, that is to say the examination of the defendant must precede the examination of any other party, complaint, witness or party in interest. (Article 93.) The Judge of Preliminary Examination is expressly prohibited from taking recourse to any form of threat, intimidation or falsehood with a view to extract from the defendant a confession of his guilt. (Article 94.)

The law declares that no visit to the place of the commission of the offense, or any other place, domiciliary searches, seizures of things, or examination of a defendant or a witness can be conducted by a Judge of Preliminary Examination without the attendance of a Clerk of the Court who shall make a minute of proceedings and sign the

The Safeguard of Civil Liberty in Japan 611

A tribunal is composed of three Judges both in a District Court as well as in a Court of Appeals. In the Local Court, which has jurisdiction in minor offenses only, the Judge sits alone; in the Court of Cassation five judges compose a tribunal which hears argument for and against the appeal on error of law. In all cases, without exception, both the prosecution as well as the defendant has the right of appeal. A case originating in a Local Court goes on appeal to that District Court in whose jurisdiction that Local Court is situated. A case tried in the first instance in one of the District Courts goes on appeal to that Court of Appeal which has jurisdiction over that District Court. There is always a new trial on appeal. On an error of law there is always a further appeal from the decision of the court which heard the case on appeal, whether that court may be a District Court or a Court of Appeal. The appeal on error goes direct to the Court of Cassation. In this way the uniformity of the interpretation of law is maintained. In the Court of Cassation there are several Civil and Criminal Departments. In the event one of the Civil or Criminal Departments of the Courts of Cassation finds it proper to render a judgment differing on point of law from the decision previously rendered by one or more departments of the same court, then the Presiding Judge of that Department must ask the President of the Court to convene a joint sitting of all the Criminal or all the Civil Departments, or of all the departments taken together. In such a case the arguments for the appellant and the respondent

same with the Judge himself. (See Article 92 of the Code of Criminal Procedure.) As the examination of the defendant by the Judge progresses, the Clerk of the Court must record the questions of the Judge and the answers given by the defendant. Upon completion of the examination the Clerk must read the record to the defendant, whereupon the Judge shall ask the defendant whether it is satisfactory to him. If the defendant requests the record should be changed in any particular, the judge must ask in what manner he wishes the record altered, and the questions as well as the answers given must be recorded in the minutes of the examination. (See Articles 95 and 96 of the Code of Criminal Procedure.) The defendant has the right to have a copy of the minutes of his examination supplied to him. (Article 97.) It is the duty of the Judge of the Preliminary Examination to investigate all the facts which are favorable to the defendant equally as those that are against him. (Article 103.)

are heard in the plenary sitting of the departments convened or the entire court, as the case may be, and the decision is given by the court so sitting.⁸

The Code of Criminal Procedure declares that no restraint may be placed on the person of a defendant at his public trial, that he shall be free to employ one or more counsel to defend him, and that with the permission of the court he may even employ a person other than a qualified attorney-at-law to act as his defender. If the defendant is younger than fifteen years of age or a woman, deaf or dumb, or shows symptoms of unsound mind, or if for any other reason the court deems it desirable to employ a counsel, the court may, upon the motion of the prosecution or on its own accord, appoint a counsel to defend the person accused.⁹

2. FREEDOM FROM DOMICILIARY VISIT.

Cases in which officers of the law are authorized to go into an inhabited house without the consent of the occupant, are limited, firstly, to cases where a policeman or a gendarme armed with a warrant of arrest has reason to believe that the person named on such warrant is hidden in his own or in another man's residence. In such a case the presence of the Mayor of the City, town or village, as the case may be, or the presence of two neighbors is required in order to enable the policeman or the gendarme to make the search in the premises. Such Mayor or neighbors must sign with the policeman or gendarme the minutes of the proceedings prepared by the latter.¹⁰

Secondly, Judges of Preliminary Examination are authorized to make similar domiciliary visits to the house of a person charged with the commission of a crime or of a person suspected of keeping in his possession a document or a thing that would prove the guilt of the accused. In case the defendant or the person suspected of keeping in his possession important proof of the guilt of the accused, is absent from his home, the presence of a member of his family or a relative living with him, and in the latter's absence the presence of the Mayor of the City, town or village, as the

⁸ See Law of Organization of Law Courts, Articles 49 and 54.

⁹ Code of Criminal Procedure, Articles 177, 179, 179 *bis*.

¹⁰ Code of Criminal Procedure, Article 78.

The Safeguard of Civil Liberty in Japan 613

case may be, is required.¹¹ No domiciliary search may be made either by the police or gendarme or by a Judge of Preliminary Examination after sunset and before sunrise except in hotels, restaurants and other like places which may be visited during the hours the place in question is actually open to the public.¹²

Thirdly, there is a statute called the Law of the Exercise of Administrative Authority which empowers competent administrative officials to enter into houses without the consent of the occupant even during the hours between sunset and sunrise, in cases where such officials have reason to believe that there is imminent danger to life or property, or that gambling or prostitution is actually going on in the premises. The same law, moreover, authorizes such competent administrative officials to visit hotels, restaurants and other similar public establishments during the time they are open to the public.¹³

3. PRIVACY OF CORRESPONDENCE.

According to Article 133 of the Penal Code of Japan, a person who has opened a sealed letter of another without justifiable cause is liable to imprisonment, with or without hard labor, for a term not exceeding one year or a fine not exceeding two hundred yen.

Article 52 of the Postal Law of Japan provides that a person who has tampered with a mail matter while in the custody of the Postal Administration, or has delivered it to a person other than the rightful addressee is punishable by imprisonment, with or without hard labor, for a term not exceeding three years or a fine not exceeding five hundred yen.¹⁴

Similar penal provisions are found in the Telegraph Law of Japan with respect to the crimes of tampering with sealed telegraphic messages or divulging matters forming the subject of correspondence by telegraph or telephone.¹⁵ The Penal Code contains further provisions regarding the destruction of official docu-

¹¹ Code of Criminal Procedure, Article 104.

¹² Code of Criminal Procedure, Articles 78 and 104.

¹³ See Article 2 of the Law of Exercise of Administrative Authority of June 2, 1900.

¹⁴ Postal Law of Japan of March 13, 1900.

¹⁵ Articles 31 and 35 of the Telegraph Law of Japan. (Law No. 59 of March 14, 1900.)

ments and papers, writings, memorandum and other instruments belonging to others that relate to rights and duties."²

4. LIBERTY OF CONSCIENCE.

There is no law in Japan that relates to the limitation of faith or that gives preference to any form of religion. As there are so many temples and shrines of Buddhist and Shinto religion in the country, there is naturally a large body of statutes and regulations relating to the secular administration of sects or the enjoyment of property rights by ecclesiastical corporations. The wording of Article 28 of the Constitution of Japan is so simple and direct that it requires no supplementary legislation to give effect to its provision. Freedom of religious belief is only limited by the condition that the belief shall not be prejudicial to peace and order, nor incompatible with the duties which an individual as a Japanese subject owes to the sovereignty of the Empire.

5. RIGHT OF PROPERTY.

Now proceeding to an examination of legal limitations to rights of property I would state that the expropriation of land for educational, scientific or philanthropic purposes, as well as for such public purposes as railroads, public highways, bridges, river embankments, canals, docks, harbors, aqueducts, transmission of electricity, laying of gas pipes, sewer pipes, etc., is permitted in Japan as in many other countries. The Cabinet, that is to say the office of the Prime Minister, determines whether a certain work contemplated by a given individual or corporation is of such a character as to warrant the application of the Expropriation Law to land needed for the furtherance of that work. In the affirmative case the Cabinet issues a public notice to that effect, whereupon the Local Governor of the place where the expropriation will take place gives a public notice specifying the pieces of land affected by the decision of the Cabinet, or otherwise notifies the parties whose rights are involved.

The party that is entitled to expropriate must negotiate with the owner of the land concerned as to the amount of compensation

²² Penal Code of Japan, Articles 258 and 259.

payable. In the event the parties fail to come to an agreement, the party in whose behalf the Expropriation Law has been set in motion, is authorized to ask for the award of a Land Expropriation Commission composed of seven persons. The Local Governor is the Chairman of that Commission, while three of the six members are appointed from among higher officials of the Imperial Government, and the remaining three are chosen by the Prefectural Council from among their own number. A Prefectural Council is an elective body and corresponds to the Board of Aldermen in Cities. There is one Prefectural Council to each Local Government. An owner of the land unsatisfied with the amount of compensation awarded by the Land Expropriation Commission may bring an action for the determination of the amount of compensation in the law courts against the party trying to expropriate him. On all points covered by the decision or award of the Land Expropriation Commission other than what relates to compensation, the party that believes its right infringed by the award may bring an action before the Administrative Court."

Conditions relating to Military Exactions are determined by Law No. 43 of August 12, 1882. Such exactions are only permissible if required by the Japanese Army or Navy in connection with its mobilization. That law also requires that whatever is expropriated must be paid for, and minute provisions are embodied in that law relating to the assessment of the amount of compensation due the owner of things appropriated.

6. SAFEGUARD AGAINST INEQUITABLE TAXATION.

The provisions of the Constitution declaring in effect that no tax can be imposed except in pursuance of a law, and that all laws require the consent of the Imperial Diet are perfectly clear. However it is permissible to inquire how the taxation laws are enforced. It is obviously impossible to go into a careful examination of such a matter within the narrow compass of a single address. However the democratic spirit which pervades the legislation of Japan relating to the levy and collection of taxes will

²⁷ See Expropriation Law of March 7, 1900, as amended by Law No. 15 of 1914. Regarding the organization and jurisdiction of Administrative Court, see Law No. 48 of June 30, 1890.

be apparent if I refer to certain features of the Business Tax Law and the Income Tax Law.¹⁹

All over the country there are scattered about a large number of Internal Taxation Offices which in the United States would be called Offices of the Collectors of Internal Revenue. The entire country for the purposes of the collection of internal revenue is divided into supervising districts, so that within the jurisdiction of an Internal Taxation Supervising Officer there are a number of Internal Taxation Offices each of which has its own district.

The factors which are to serve as the basis of calculation in the assessment of Income or Business Tax are specified in the Laws themselves, but the question as to which schedule or what factors stated in the Business Tax Law are applicable to a particular case or what the amount of taxable income is, is a question of fact to be determined in each case. For the determination of such facts both the Business Tax Law as well as the Income Tax Law require that Assessment Committees shall be chosen from among the taxpayers themselves. The election is by double election, that is to say, the electoral college is chosen by the taxpayers at the rate of one elector to every ten taxpayers; provided, however, that not more than twenty electors shall be appointed in each electoral district. The twenty men so chosen elect the necessary number of men to form the Assessment Committee.

If any taxpayer is dissatisfied with the assessment made by the Committee and communicated to him by the Government, he has a right of appeal to the Government which must in turn submit the case to the Investigation Committee composed of three Taxation Officials and four members of the Assessment Committee. In other words the democratic element is in the majority.

If the Government accepts the decision of the Investigation Committee while the taxpayer is dissatisfied, the recourse of the latter is an administrative action before the Administrative Court.

¹⁹ Business Tax Law now in operation was promulgated as Law No. 33 on March 28, 1896.

Income Tax Law now in operation is the Revised Income Tax Law of February 13, 1899.

See particularly Articles 26, 27 and 28 of the Business Tax Law and Articles 11, 12, 14, 15, 28, 31, 36, 37 and 39 of the Income Tax Law.

The Safeguard of Civil Liberty in Japan 617

7. LIBERTY OF SPEECH, WRITING AND PUBLICATION.

Article 52 of the Constitution of Japan declares:

"No member of either House of the Imperial Diet shall be held responsible outside the respective Houses for any opinion uttered or for any vote given in the House. When, however, a member himself has given publicity to his opinions by public speech, by documents in print, or in writing, or by any other similar means, he shall in that matter be amenable to the general law."

The restrictions on the liberty of speech, writing and publication are contained in Law No. 36 of March 10, 1900, called the Law of Public Safety Police, the Penal Code, the Law of Publication²⁹ and the Press Law.³⁰ In none of these laws is there any restriction on the legitimate enjoyment of the freedom of speech. The Penal Code of Japan, like that of any other civilized nation with monarchical form of government, contains special clauses relating to the crime of slander and libel committed against the Emperor or members of his family, in addition to ordinary cases of slander and libel generally. The Laws of Public Safety Police and of Publication, as well as the Press Law, provide that matters relating to the Preliminary Examination of offenses shall not be discussed in public speech, in printed books or pamphlets, or in the press, that criminals shall not be made objects of public encomium or approbation, that nothing tending to subvert the political institution of the country or otherwise lead to breach of public peace, or anything contrary to good morals shall be publicly discussed. These are measures which all civilized states adopt for their own safety. No official document relating to diplomatic, military or other state secrets, which have not been divulged by the departments of the Government concerned, may be made public, and the Ministers of State for War, for the Navy and for Foreign Affairs are authorized to prohibit publication in the press of matters which for military or diplomatic reasons should not be made public. It is impossible for me to enter at this place into a more detailed examination of the provisions of the laws referred to, but I assure you that the limitations imposed are for the good of the country.

²⁹ Law No. 15 of April 14, 1893.

³⁰ Law No. 41 of May 6, 1909.

8. LIBERTY OF ASSOCIATIONS AND OF PUBLIC MEETINGS.

No secret society is permitted in Japan. The Law of Public Police contains regulations governing the formation of political parties, political gatherings, and out-door demonstrations.

CONCLUSION.

The more you see of us and the more you hear us speak, the more you will be convinced that we do things in Japan much in the same way as you do in this country. The quaint customs, the oddity of things, the picturesque in the scenery, attire and the ways of life in distant lands appeal to the imagination. In the description of Japan which travelers and sojourners from this country have given you, emphasis has been placed on points wherein we differ from you. The points of resemblance are never noted for the reason that the realities of life are prosaic. On the one hand, we have been depicted as a nation of poets who did nothing else but sit under plum blossoms, sip tea and sing the glory of the moon. On the other hand, we have been described as an exceedingly polite people who never thought of their own convenience or inclination, but to whom the will and the pleasures of others were law, who considered that if their rights were invaded it was simply a matter to be met with by a pleasant smile. Such an extraordinary over-estimation of Japanese character, which we do not merit, serves no useful purpose. It does not draw the peoples of the two countries an inch nearer to each other, but each remains a strange people to the other.

In this great war in which the attention of all thinking men is centered, it is whispered here and there whether Japan has not misplaced herself in siding with the Allies against the Central Empires of Europe. In the laconic brevity of mottoes and slogans there is always the danger of the vulgar and the unthinking misinterpreting the meaning intended to be conveyed. When President Wilson declared that this was a war of democracy *versus* autocracy, manifestly he did not mean that this was a war of republicanism *versus* monarchism. The people of the United States are the last people on earth to deny to another people the right to choose for themselves that form of government which the latter thinks is best adapted to themselves. Is not Germany's

The Safeguard of Civil Liberty in Japan 619

denial to some of the unfortunate people under her sway of the right to choose their own sovereignty, one of the crimes for which we hold her responsible? The United States went into this war because the German warfare against commerce was a challenge to all mankind. It is for the vindication of human right that this nation is stirred to the core.

Japan has the same ideals to which you are dedicated. We stand for the rights of humanity. If in this brief address I have made clear to you some of the fundamental principles on which our legislation is based, if I have shown that the Japanese people are not the kind of people to quietly submit to the invasion of their rights or the curtailment of personal liberty, I may congratulate myself on having contributed something towards the better understanding between our two countries.

When it is suggested that Japan is misplaced in this War because this is a war of democracy against monarchy, I see the subtle working of German propaganda. Germany is determined that Japan and the United States shall not be friends; Germany today is sowing the seeds of mistrust between us with the same insistence that has marked her activity in that direction ever since Japan has become a factor to be considered in world politics. If you will recall with what punctilious observance of the rules of civilized warfare Japan fought her wars of 1894-95 and 1904-05, and if you will consider the manner in which we safeguard the civil liberty of our people at home, you will perceive that we place justice and right over material prosperity, military efficiency, or achievements in science and in art.

ITALY, OUR ALLY; HER GREAT PART IN THE WAR.

BY

GEORGE P. SCRIVEN,

BRIGADIER-GENERAL UNITED STATES ARMY.

I appreciate most highly the honor of appearing before so distinguished an audience as that present this afternoon; and I would perhaps hesitate to do so, were it not for the fact that having recently returned from service with the Italian armies, first on the Piave front, then in Albania, and in Macedonia as military observer. I have seen many things—especially in the little-known regions of the Balkan Peninsula—which deserve the attention of thinking people and will, I am sure, receive it, if only I can properly draw the picture.

In the service mentioned, I have grown to know much of the officers and men of the Italian Army and have learned to add to the respect and liking inspired by them in peace a warm admiration for their conduct in war, not only as fighting men, the first purpose of the soldier, but as leaders and instructors of the non-civilized peoples, whose countries they have been called upon to govern.

The Italian soldier, in addition to the achievements won in the countries he has been called upon to occupy by the exigencies of the war, has done much service for civilization and for humanity in other outlying regions of the world, especially on the African coasts; but it is not necessary for me to consider here matters which lie outside the present theater of war.

Italy is playing on two stages—one, set in the heart of Europe; the other, placed amongst the desolate mountains of the South Balkan Peninsula. To this region, and especially to Macedonia and Albania, the war at first brought distress and misery; but later with the occupation by the Allies, it has brought to the inhabitants not only comparative tranquility and unaccustomed

Italy, Our Ally; Her Great Part in the War 621

protection, but respite from hunger, from misery and fighting. Never in fact have the people of Macedonia and Albania been so much at peace as now when they are in war.

It is fierce, impoverished Albania, however, lying beautiful but unknown within sight of the very shores of Italy, that her soldiers have come as a blessing, much as the American soldier twenty years ago came to the Philippines, first to fight an enemy, then to redeem a people and to build up a nation. Like the American the Italian has for three years been fighting an enemy with one hand, while with the other he has guided a people along the road of improvement and uplift. With the American the work is over; with the Italian the end is not yet in sight; but in company with the gallant French he is still driving the Austrian back across the mountains of Albania to a military, and we hope, to a political finish.

The Italian in Albania and the American in the Philippines alike, stand side by side in the world's uplift.

So, as I think, there are two distinct phases of the great part that Italy is playing in the war. One, a fight of destruction for a victory that shall give the world a lasting peace; the other, of reconstruction that shall forever benefit the peoples whom the fortune of war has given into Italy's hands. I shall consider each of these phases separately, but before proceeding further desire to recall a few of the earlier events of the war that relate to Italy.

When the war broke out, Italy remained neutral. This might have been expected as the almost inevitable result of conditions then imposed upon her. She had been the ally of Germany for a third of a century; since 1883 indeed, when she signed the treaty of the Triple Alliance, by which Germany even at that early day endeavored to bind Middle Europe together as against the East and the West. In addition to this treaty, Italy was held to Germany by a strong tie of interest as well as friendship. For many years Germany had been gaining strength in Italy, socially, industrially and commercially; Germans swarmed in the cities and towns; Germans or German-Swiss conducted the hotels and cafes; German money was invested in a thousand enterprises and business affairs large and small. The German loved Italy and sojourned there whenever he could do so to study its ruins,

enjoy its art, and to bathe in Italian sunshine from the Alps to the seas. When the war came, it was difficult for the German to believe that he did not possess the land of Italy, or at least that the German idea could not control its people.

With Germany and Austria, Italy's treaty was a defensive, and therefore a peaceful treaty, and she refused to be forced into an aggressive, selfish, and unnecessary war. In this she was consistent, for when Austria and Germany would have gone to the assistance of Bulgaria in the second Balkan war, Italy in the person of her then Premier Giolitti absolutely refused as a member of the Triple Alliance to countenance any such course. She refused also the half-hearted concessions of territory offered by Austria at Germany's instigation to secure her neutrality; she refused to yield to German importunity, and like the United States, she refused to be hurried into a decision. At length, however, after nine months of waiting, the decision came, and it was for war. On May 23, 1915, Italy declared that from the next day she considered herself in a state of war with Austria-Hungary, and on the 27th, the Italian troops crossed the Isonzo and captured Pilcoute and Ala on the Adige.

If in this decision the government followed a purely Italian policy, as the Premier Salandra declared she would do, who can blame her? It is true that she was mindful of her own future; that the security of her northeastern frontiers forced her to rectify, at Austria's expense, the boundary lines of territory threatened from the higher Alps; she also probably distrusted German ambition as much as did the rest of the world; and she was called upon by the voice of her people to reclaim Italia Irredenta, the half-Italian provinces of Austria, which in Italian eyes are as much a part of Italy as Alsace-Lorraine itself is part of France. All these things impelled her to stand with the Entente and if for her the war was a war of policy, it was also a war of right. Italy did not enter upon a war of conquest and her refusal to encourage a forced and causeless war is an act that will ever remain to her credit.

Italy was committed to the war; but her nine months of hesitation had a lasting influence upon the course of events. Unlike Belgium, she was too strong, and her attitude, while there was

still hope for German Alliance, was too uncertain to allow Germany to threaten the French frontier on the south and east by an Austrian advance through Turin and Modane or Ventigmila; and by an enveloping movement in the early days of the war force back the flank of the thin French line resting against Switzerland and Italy, and that remained secure as long as Italy was friendly or neutral. Had Italy, however, been actively hostile to France, her three million of trained men—many more at a later date—moving by Italian railroads against the French forces already fully occupied by the German thrust from the north, might have given another turn to the early brilliant success of the Marne, or to the fine defence at Verdun. So it seems that Italy's early attitude in the war was vital to the Allied success of those days.

On the other hand, should Italy be blamed for not at an earlier date throwing in her lot with the Allies? I think not more so than other countries. For them, as for her, the situation was not clear; the grounds were undefined; war might still be averted, and precipitation was dangerous. Even had she hastened into war, her active cooperation could have done no more than hearten the Allies and could have little affected the course of events, for Italy's enemy in that case would then, as afterward, have lain on the northeastern frontier; her campaign must take place there also; and short of an actual crossing of the Austrian front by a strong active army and so helping Russia more fully than merely by threat, Italy active could have done little more in the early months of the war than her passive neutrality had done.

However, the consideration of what might have been is too academic to take up attention here. What we know is that Italy once in the war prepared with all her strength to carry it through successfully. Objectors there were, of course, pacifists and German sympathizers; but which country at the outbreak of the war has been unhampered by such as these? Upon the declaration of war Parliament immediately entrusted the Cabinet with full powers for its conduct; complete mobilizations of the army and navy were ordered; and the former stimulated by the leadership of that great patriot—the King—by the loyal support of

men bearing historic names, and by the example of such fine soldiers as the Duke of Aosta, and the fighting Count of Turin, some three millions of devoted men drawn from all countries and from all walks of life were called to the colors under the leadership of General Cadorna—who, whatever may have been his later faults or misfortunes, proved in the early days of hostilities great qualities of leadership. Soon the army entered Austrian territory on all its land fronts and drove the Austrians back to the fortified lines.

The obvious objective of Italy was Trieste, but the natural strength of the Austrian positions and the care with which they had been fortified made the campaign one of great difficulty and in addition large forces were necessarily retained to guard the Venetian plain from Austrian attack in the Trentino. As a consequence, the later months of the year 1915, and the early part of 1916 passed without any marked territorial advance. The battle lines of the contending armies lying high among snow-covered mountains and valleys, made fighting difficult, and the supplies of the army hard to maintain. But Italy was gathering her strength and in June when the Austrian offensive in the Trentino failed, the Austrian retreat began. The Italians followed on to the Isonzo and began the attack on the lower river on August 6, captured Gorizia a few days later and the King of Italy entered the city at the head of a cavalry command.

Soon the entire Daberdo plateau fell into Italian hands and later General Cadorna advanced to within range of Castagnavizza. The Italians, in the spring of 1917, continued successfully their aggressive tactics east of Gorizia and seeing that the Austrian position was becoming dangerous, the Germans began sending reinforcements to crush Italy, but without avail until the fatal 24th of October, 1917, arrived, when an attack made by Austrians, Turks and veterans from Germany forced the armies of General Cadorna to yield. Then indeed came disaster! The Italian forces were driven from their position in the north-eastern Venetia on a sixty-mile front from the Adriatic to the Caernic Alps; Caporetto, a little unknown village of the Alps, jumped suddenly into fame and the magnificent successes of the Italian Army were brought to nothing in one October day. It was

a terrible blow and although General Cadorna managed his retreat well, holding the enemy for five days at the Tagliamento, and retiring stubbornly, he could make no stand until the position along the river Piave was reached on November 9. Here the enemy was checked and held.

With her troops, Germany had sent her spies and her emissaries. These spread the propaganda of distrust amongst the soldiers by stories of revolts in Italy; of murder and rapine by the Allies behind the lines; of disloyalty of Italian troops; of America's false pretense of assistance, and many others—all false and all absurd; yet they bore their fruit; and the men of the second Italian army became affected, and to the anger and contempt of their countrymen, they gave way. Other causes—a new and virulent gas, which the gas masks worn at the time could not check—are reported to have been at work, but the truth about Caporetto will not be known until history is written.

So it was that in an army of hundreds of thousands of men, which had been almost continuously successful for two and one-half years and had advanced across a region where only the alpini and chamois travel, and where all the skill of the engineer is needed as well as all the courage that men possess, lost all in a night, except the proud record of achievement which stands, I think, unparalleled in history.

I shall not attempt to give details of this advance of the Italian army over Alpine crags, through snows, and beneath tunnelled mountains, in a campaign of many months, nor shall I attempt to describe the fight of the soldier against man and nature; suffice to say that some day the traveller will pass over the scene of this Italian march, and wonder what manner of men they were that could achieve this thing. Caporetto was a disaster for which the world was unprepared, but the world had done nothing to prevent it except to applaud the single-handed thrust of the Italian armies against the very heart of Austria, which was in reality the most dangerous threat yet made against the enemy. But in looking back it is useless to say that such a result should never have been allowed to happen; that the Allies should have supported Italy in her advance. Certain it is that in October, 1917, the Allies could give little help—their hands were full. America

was not yet in the war; England and France had each her frontier to defend; the German was thundering at the gate and the army of Salonica was far away and engaged with its own tasks. Support presumably was impossible, and although Italy was leading the way along the highroad of successful attack upon the Central Empires, and had reached the very threshold of the door of approach to the heart of Austria, it was the fortune of war that she could go no further; that Germany had troops ready to throw into the fight and the Allies had none. With victory on the Bainsizza plateau, a day's forced march would have carried the armies to historic Laibach. Beyond lay Vienna well within striking distance, and like Budapest, offering no obstacle to attack. Germany lay open to the left; Hungary to the right by a road leading to the gate of Russia. But the opportunity has gone and if some day it may return, conditions will have changed.

On the hastily prepared line of the Piave, the retreat was checked; and most of the men of the second army, ashamed of their weakness, returned to the fighting ranks, as individuals but not as units. There was no lamentation; no fear; no thought of weakness or delay on the part of army or government. The army regained its spirit; the government sent every available man to the lines; used every gun; employed every means of transport from the four-ton camion to the pack-mule and bullock cart. French and English troops, though coming in, did not arrive in force until the enemy had been checked by the stand of the Italian soldiers.

When I reached the Piave in November, the defence had solidified and there in the mud, the rain and the cold, behind flimsy trenches and sometimes with no trenches at all, the young gray-clad lads of Italy recently called to the colors cheerfully took their place like veterans in the long thin line that extended from beyond Mt. Grappa to the sea—a quiet determined line which the enemy could not break.

The morale of these men convinced me that the defence would hold, and I so reported officially. Then it was that my admiration for the Italian soldier took form and crystallized into a belief that will never change.

A retreat to the Adige or to the Po, which was feared by the people behind the front, would have given to the enemy a foothold on the plains of Northern Italy, which would have been difficult to shake off. Padua, Verona, Venice and probably Milan would have fallen, and Italy reduced to dire extremity. But the line of the Piave was held by an army of men purged of weakness, resolved to die rather than to yield; and that line stood firm while the world waited breathless in anxiety. While the line held, north Italy was safe and even Venice, though bombed, was in no great danger of capture. The cry of "Venice captured by the enemy" was little more than a German lie and a Turkish hope, for dearly the Moslem desired to see the Star and Crescent flying over the Cathedral of St. Mark's. Later came the Italian victories of July, and the story of the Piave is not yet told. But certain it is that from a reproach the army of North Italy has converted Caporetto into the triumph of the Piave, and who can doubt that this name will live in history? It may well be that to the defenders of her integrity as a nation, Italy will some day erect a column as inspiring as that which stands in the heart of Rome to commemorate the victories of Trajan over the barbarians of his day—no worse than the Hun of the present whose defeat has greater significance to the world than Trajan's triumph over the Dacians nineteen hundred years ago.

Maybe the sequel to the defence of the Piave will be played at Vienna; but be the future what it may, Germany still spreads like a great octopus across the world, stretching her tentacles over many lands and across many seas. Should the Allies attempt to scatter their forces abroad in vain attempt to cut away each arm of the devil-fish that holds some valuable prey, they will waste their energies in futile efforts. The true attack of the German must be now against the heart which beats in Northern France. The heart dead, the tentacles will loosen and fall by themselves. In other words, I believe the Germans must be destroyed or at least overmatched in the West, before attempt should be made to wander with armies over the face of the earth and beat him in distant fields.

However, I have nothing to do here with questions of policy or grand tactics, and I turn to the second field of Italian activity, which lies across the Adriatic on the western confines of the Balkans.

THE ITALIANS IN THE BALKANS.

In regard to the Balkan Peninsula it will be recalled that the Turk—a people much better than his always impossible government—held sway over the country until the year 1912, when this Old Man of the Sea was driven back—probably forever to, and perhaps beyond, the Golden Horn.

A time of quiet and progress then appeared about to dawn upon the Balkans, especially upon Albania, whose people were recovering from the wretchedness imposed by the Balkan wars and were hoping to enjoy peace with self-government; when a confused struggle for control of the country broke out, a sort of Donnybrook Fair of the neighboring nations, which again brought Albania to chaos. The Powers interfered, and at the instigation of Italy, it was decreed at the London Conference that Albania should become an independent state, of which the boundaries were outlined. In early March, 1914, Prince William of Wied landed at Durazzo to put himself at the head of the government. Almost immediately another revolution broke out, instigated from without, it is said; and the Prince of Wied with no army and no money failed to quell the uprising and in the attempt was compelled to flee from Durazzo, which he did on the 3d of September, 1914, after a wretched reign of six months. Essad Pasha, a descendant of the celebrated Ali Bey, raised the flag of Scanderberg and was proclaimed and I believe acknowledged as Albania's head; but Essad disappeared.¹

The great war broke out and the troubles of the little peoples of Europe were swept away in the whirlwind that gathered over the world. No one knew or cared about the fate of the Prince of Wied, nor much about that of Albania. But the Italians, though still neutral, were watching the course of events in Albania and in December of 1914, as a wise precaution, sent the Tenth Regiment of Bersaglieri to occupy Valona, a little fishing village on the shores of a magnificent bay.

The winter passed quietly in watchful waiting, but after a time Italy found it necessary on account of the attitude of Greece, then

¹ It is said, that after joining the Turks, he went over to the English Allies in Asia Minor and Palestine, but I do not know anything of the truth of the various rumors about him.

Italy, Our Ally; Her Great Part in the War 629

under the influence of its Germanophile King Constantine, to take more active measures. Consequently between August and the middle of October, 1915, Italy sent additional forces to Valona and from there at the request of the people, and without violence occupied successively, Tepeleni, Chimara, Santi Quaranta, Arjirokastro, Premati, and Liascoviki—all towns of importance in Albania; and owing to the disturbed conditions the troops went south as far as Janina, and extended the line of occupation eastward along the old Turkish highway to Ersek.

In October, 1916, the French occupied Koritza and hoisted the Albanian flag, and extending south and west joined the Italian right flank at Ersek in February, 1917. Here the lines still remain—a cordon of troops that extends from the Adriatic to the *Ægean* Sea.

Following the removal of King Constantine and the accession to power of M. Venizelos, the Italian troops were withdrawn from the territory of Greece, and retired within the boundaries of the Conference of London, retaining only for police purposes the occupation of the triangle outlined by the old highway, which is now the line of communication of the army. This occupation is by agreement of Greece under whose control the population lives.

The part of the Balkan Peninsula, which at that time, or soon after, came under Allied control,² extended, roughly speaking, from the mouth of the river Voiussa by the course of that stream, eastward to the valley of the Osum and the lakes and beyond to Monastir, hence along the mountain crests to the lake of Doiran ending at the Gulf of Orfano. The eastern sector from the boundary between Albania and Macedonia drawn by the London Conference is peopled by the Greek and by the varied, conglomerate population of Macedonia, while to the west extending from the Allied front to the new boundaries of Greece are established the homogeneous race of the Albanians. Of the Turk and of his centuries of rule, but a few living traces remain. At the present

² In July, 1918, however, the Italian and French advance on the west straightened the northern line of the Allies by cutting out the bend south of Berat and capturing that place. At the time of this writing the line runs practically east and west from about Bishanaka.

time superimposed upon the inhabitants of this region are the troops of Italy, of France, of Serbia, of Italy again, of Greece and of England, but except at the extreme flanks of this line in the neighborhood of Valona and Santi Quaranta on the west and of Salonica on the east, the fighting men do not enter the life of the people, except that they make it more bearable.

The Allied troops landed at Salonica in October, 1915, upon the invitation of M. Venizelos, then premier of Greece. The troops under the command of the French general at first consisted of a small force of French and English. But this was subsequently strengthened. Great things were expected of the expeditionary army of Salonica and indeed great things have been accomplished, but they are not the things that were expected, or at least hoped for.

I am tempted to say here, however, despite the fact that it is something of a digression, that the expeditionary army though apparently in a state of inertia for many months has not been so. It has fought vigorously, it has prevented the German and the Bulgar from overrunning the country, and has, I believe, been a blessing to the country and people. So, too, has the Italian in Albania. Both armies have brought with them peace to the people—if they want peace—and have offered them work and given them bread. The armies have improved the almost trackless and sparsely settled regions by good roads, have installed innumerable works of utility; and have helped the people morally as well as materially.

To the army of Salonica was added the Italian force, now stationed in Macedonia under the command of General Mombelli and occupying the mountain ridges along the bend of the river Cerna in face of the now desolate valley of Monastir. The Italians arrived at Salonica in August of 1916, and in December took over the lines which the French and Serbs had wrested from the enemy. Here on the mountain crests the Italian force is fighting the German and the Bulgar, as he has fought them for twenty months, in trenches that at times approach the enemy within a few yards, steadily under fire and constantly in action. Neither force can advance and neither will retire. Both may say with Mac-Mahon, "J'y suis, et j'y reste." It may seem like a stalemate; but some day the enemy will lose the game.

In reality, therefore, there are two separate Italian armies operating in the Balkans—the one in Macedonia, the other in Albania. The latter army remains now under the command of Lieutenant-General Giacinto Ferraro.

This army of Albania which arrived at Valona in 1915, as I have related, was at first occupied by the enemy and with military affairs to such an extent that little attention could be given to the people. Its chief care had been given to the disorganized Serbian army, the story of whose retreat is too well known to need recapitulation here. So it was not until the spring of 1918 that the real work of improvement began.

The town of Valona before the occupation was a pest hole of mud, mosquitoes and fever; but around it are magnificent and extensive groves of olives; commanding hills and pleasant and fertile valleys.

It was soon evident that Valona on account of its position and harbor must become not merely the Italian military base, but the seat of government. Soon streets were paved, hospitals, electric light and ice plants installed, and well-made motor roads run out to the important advance positions. In addition the back country was opened up and a fine highway built across mountain ranges to the east joining the ancient, now destroyed, town of Tepeleni with Arjirokastrò and the old Turkish road, still in existence, leading thence across Albania and Macedonia, to Salonica, nearly four hundred miles away. This work was necessary from a military point of view, but it was also of lasting value to the country, and other projects for the benefit of the people were commenced. Civil hospitals were opened; buildings assigned for the use of prefects and courts, school houses built, and even a cemetery for the Moslem dead was laid out to induce these people to give over their custom of burying their friends at the doorstep.

But perhaps the greatest of the works done at this time by the Italians was the construction of a road some eighty miles in length along the Adriatic, from Santi Quaranta by Porto Palermo to Valona. This road runs for much of its distance high above the sea, along the edge of steep precipices at whose feet far below lie pretty sandy coves extending into fertile valleys, beautiful, but unpeopled. Then zig-zagging up the mountains, with turns

like a fish-hook it juts out upon spurs looking far away over the blue Adriatic towards Corfu perhaps, or towards the distant shore of Italy; and climbing to the snows disappears in the clouds. This highway which the Italians have given to Albania and to the world is far more beautiful than the Corniche of the Mediterranean and will one day become more celebrated.

It was my fortune to be invited to accompany General Ferraro at its opening, and the journey gave me the opportunity of observing the attitude of the Albanians towards the Italian. This was an attitude of respect, one even of affection. Everywhere were demonstrations of welcome; arches were thrown across the road; school children presented some small address, or offered a little song; houses were draped with flags or eastern rugs; country men and women, priests and soldiers, all gathered to greet "Our General," as he was called and, indeed, he seemed to be their general and their friend. To him the women came freely to seek some favor for father or brother or husband in trouble, and always their petition was given a kindly hearing, whatever the result. Beside the road, here and there as we passed, stood long lines of Austrian prisoners who had done a great part of the labor. They looked patient, but not cheerful, but as prisoners of war their lot did not seem a hard one. Certainly their work was useful and they were treated by the Italian officers with the most scrupulous courtesy.

I have no time here to discuss the many other works of material improvement performed by the Italian army in Albania. Their efforts are continuous and soon the old life of Albania will have passed away. Already the Vendetta seems to have disappeared; an armed man, except the soldier, is not seen; the country is safe; the people given work. Often along roads that are coming into existence, I have seen long lines of women, children and old men, thousands of them it seemed to me, breaking stone from morning to night, for which they receive three lire and their bread and cheese per day. Even the very little ones are given the ration. Work is provided for those who can work and to the helpless the government issues flour, rice, cornmeal and sugar. So by its work and by its charity the Italian Government has given the people of Albania the bread which has kept them from starvation. But

besides material assistance, much moral help has been extended to these people. The territories occupied by the Italians include the two provinces of Valona and Arjirokastro and the District of Chimara. Of these the Province of Valona is administered by a prefect who is a native. The province of Arjirokastro is administered by a prefect and an administrative council with Mussulman and Orthodox members at whose head is an Italian Commissary. The province is subdivided into the six districts, each of which has a subprefecture held by a native subprefect, who is at the same time the chief of a native administrative council. An Italian commissary joins the subprefect in all decisions connected with war necessities. The province includes seven municipalities, whose members are elected by the natives.

The District of Chimara is actually managed by an Italian Commissary. Each prefecture has a separate administration, and pays from its income the expenses of all public services (justice, police, sanitary, school, public beneficence). So much for administrative control.

As to justice, I may say from what was told me in Albania, that before the Italian occupation this administration did not give satisfactory results. The Judges, who were badly paid, were easily corrupted; and the people frequently took matters of justice into their own hands in a very barbarous way. The Vendetta was of course an established custom; and in some places a fixed price for immunity was recognized.

Edicts were early published, and to these others were added by the commanding general, which insured a better administration of justice, without, however, affecting any great modification of local customs.

Courts are presided over by an Italian magistrate, but the judges are natives of the various confessions of faith selected in accordance with the faith professed by the parties to the litigation. Religious courts (Orthodox or Mussulman) have been safeguarded; but their competence is limited to questions regarding personal statutes, such as marriages and rights of succession. In this way religious antagonism is obviated before the courts.

Controversies to which Italians residents are parties, in order that they shall be accorded their proper rights are judged by an

ordinary tribunal, the members of which are the president of the tribunal, the inquiring magistrate and the prætor. *Jus Privatum* controversies are decided according to Ottoman law and local traditions (customs) while criminal matters which affect public interests and the sovereignty of the state are subject to Italian law. Authority is given to the magistrates to take due account of all circumstances which according to local customs may seem to diminish responsibility.

There are two ordinary tribunals, five pretura (pretore) and peace judges. The pretura judge (pretore) is an Italian magistrate having jurisdiction of crimes which imply penalties up to six months imprisonment. He decides regarding controversies which do not exceed It. 1500 L. value, whilst the peace judge cannot decide those exceeding It. 500 L.

All other civil or criminal matters are subject to trial before the tribunal. Each tribunal has its own attorney and prosecuting magistrate, Italian registrars and native clerks are assigned to each court. Many criminals who had committed acts for which they were charged before the Italians landed were tried by the courts. In order to annul ancient feuds existing between various people, the government issued instructions in accordance with which certain criminals were allowed to be prosecuted at the request of one of the parties concerned up to September 30, 1917.

In each district a committee of native notables, superintended by the pretore, is charged with the payment of fines arising from such crimes. The tribune's decisions do not admit of appeal.

In the case of all judgments, the power of mitigation is reserved to the government, which decides all matters of pardon. Considering that appeals from judgments are very rare and that the number of family feuds have sensibly diminished, it is to be concluded that the new system has proved satisfactory.

Taxes for law suits are fixed according to Mussulman law.

Health is especially cared for by a sanitary department divided into two sections (medical and veterinary), each charged with hygienic care of the people and the inspection and treatment of animals. Municipal physicians reside in the large centers, while others are charged with the care of the health of the smaller villages which they visit when necessary.

In the districts where troops are in camp, medical officers are in charge of the hospital service for the natives. A municipal doctor is appointed for the sanitary care of the town of Valona; and a hospital has been built of late with all modern and scientific arrangements. Municipal doctors are charged with the visiting of the sick at their houses, and necessary medicines are issued by the public dispensary to the poor. Special buildings have been fitted up for lodging places for homeless natives, and orphans who have been abandoned are confined to the care of families on whose morality the authorities can rely. In order to fight the most severe and the most characteristic of local sickness—malarial—quinine is largely distributed to the natives. It is even issued to the schoolmasters for the benefit of their students.

These seem to be perhaps somewhat trivial matters to relate, but are necessary I think to show the excellent care given to small details of the work done for the people by the Italians. A word in regard to schools, of which it may be briefly stated, that, during the Turkish régimes, the school question was completely ignored. The few schools which at that time existed were sectarian in character, Orthodox with an Hellenophile tendency, or Turkish Mohammedan. The Prince of Wied's government was unable to solve that or probably any other problem, but upon the landing of Italian troops the question of schools immediately came up and common and sectarian schools started in every village where both languages, Italian and Albanian, are taught. The Italian masters were chosen from amongst professional teachers picked from the troops, preference being given to those of Italo-Albanian origin, who are able to speak the native language. The government considers the problem of native language to be intimately connected with the broader one of the development of an Albanian conscience. Teaching is at present limited to the standard classics, special attention being given to an elementary practical course in agriculture. For this purpose every school is provided with an orchard or garden which all the school children help to cultivate. Each boy has a bread ration daily and, thanks to private contributions, clothes and books have been distributed in many schools. The schools are 155 at present, with 278 teachers and about 10,000 school children. At Arjirokastro, in

behalf of the prefectura, a technical and commercial school has just been started and another will shortly be opened at Valona.

As regards agriculture, it may be said that Italians have made an excellent beginning in training the people, by means of experimental farms. The best of these is at Valona, where the farm is established in a valley north of the town. It is an interesting institution and has proved useful to the army as well as instructive to the people. There are here under cultivation some four hundred acres, which produce wheat, vegetables, such as onions, cabbages, lettuce, and other things. Excellent houses have been erected and others are in progress. Some thirty-five soldiers are quartered here to till the lands and instruct the natives; of the latter about the same number are employed. These are paid one lira per day, with a little food, principally corn meal given gratuitously. The natives prefer this to labor on the roads, though for that work in the neighborhood of Valona, the Italian Government pays three and one-half lira per day.

For the instruction of the country people, as well as for practical purposes, modern methods of cultivation are used, and approved farm machinery employed; for instance, an American plow and a gasoline-driven engine, and other implements, were seen. The farm was this spring only in its second season; but already it seems that an average of 4000 lire per month has been received from the sale of the produce, chiefly of course to the markets of Valona for use of the soldiers. Already the soldier-farmers are raising pigs, chickens, turkeys and pigeons and are experimenting with hares. It is a great work, intended primarily as an example to Albanian tenants and proprietors who are following the instruction they receive. They are given seed and farm machinery by the Italian Government, but are required in return to sell their produce for the use of the troops. For the cultivation of these farms, the government advances the money, but is repaid from the sales. Prices are fixed at a moderate rate.

Italian experts—all soldiers serving with the colors—superintend the working of the farms; labor is supplied partly by Italian soldiers, partly by refugees from the territory occupied by the Austrians. For sowing 4000 quintals of wheat and 2000 of maize (corn) have this year been distributed to the natives. A practical agricultural college is to be started on the farm near Valona.

The experimental farm at Valona is a success. It is a result of the efforts of General Ferraro, who takes almost a boyish delight in his farm. There are several others that I have seen; one at Liascoviki in the heart of the mountains; one near Perati, at the junction of the Voiussa and the Sarandoporos rivers; and one in the pretty and rich valley of the Voiussa near Premati, and doubtless many others have been or will be established.

Olive trees are very abundant about Valona and an oil mill working in accordance with the most approved methods has been established. The oil is greatly superior to that formerly made by local and primitive methods.

Severe measures also have been taken by the Italians for the protection of public and private forests and all statistical and scientific information that may serve in the future to assist agricultural and colonizing purposes is carefully collected by experts.

Notwithstanding the increased activity of the natives, local food sources are far from being sufficient for the people, and the military authorities have taken upon themselves the management of food supplies. A special department has been created, through which it has been found possible to supply by import the lack of quantity and quality of food stuffs raised, and to avoid the danger that the public interests may be subjected to private speculation.

Custom-houses have been established at various points. The mail and telegraph service is spread over the zone. Post and telegraph offices are managed by Italian and native clerks.

With the present the Albanian is, I think, content; under Allied control he may fight, work, or idle as suits him best. If he wishes to fight he enters the bands, serves with troops, and is paid and fed; if he wants to work—a longing probably not irresistible among the men—he can readily find a government job; or he may till his fields in peace, or better still, he can see to it that his women and children do the work for him while he bosses the job. If too grand to work he may sit and doze in the sun beside his flocks and herds, assured that no armed bandit will come to disturb him or his family working in the valley below. True, the Albanian peasant is now without arms, but so too is the bandit, and the ever-present soldier of the Allies is his friend and the protector of his home.

Much work has been done by the Italians in addition to those things I have outlined, but there is not time to mention them in the sketch I have endeavored to draw, and long though this paper is, I have hardly more than outlined the story of the work the Italian soldier is doing for Albania. It will of course be said that Italy has an object to gain by her work; she has aspirations in Albania. No doubt she has, but so too had the German in Belgium; and I invite your attention to the contrast that lies in the methods employed and to the results obtained. Italy's achievements have been the uplift and friendship of a people; Germany's the ruin and undying hatred of those over whom the war for a time has placed her. Each has reaped the harvest she has sown. Shall not each have his reward?

In conclusion, I beg to offer a few facts which I think speak well for Italy. First, she has now in the field the three armies which I have mentioned and which I have visited; one, under General Diaz in the north; a second, under General Ferraro in Albania; a third, under General Mombelli in Macedonia; and in addition there is a fourth army under General Morrone now fighting in France. Besides the men engaged in military operations is a force of many thousand Italian laborers under military control engaged in the work of the armies in France. To these should be added one million of workers employed in the munition shops. Roughly speaking, one-tenth of the population of Italy, men, women and children, are on the rolls of the government, engaged in the work of the war. A million men have dropped from the fighting lines. Such is the contribution of her people that Italy is giving to the war.

As to her part in the war, I think in all justice it will be said when the great score of the nations is marked upon the tablets of history, that—

To Italy's neutrality—the world owes the safety of the eastern frontier of France in the early days of the war.

To Italy's support of the Allies—the world owes the first check to German ambitions; the absence of Austria from the western field; and as we hope, the future downfall of that empire.

To Italy's defence of the Piave—the world owes the integrity of the Allies' right wing, and escape from the elimination of a second great and friendly factor in the war.

Italy, Our Ally; Her Great Part in the War 639

To Italy's course in Albania—the world owes the uplift of a people from wretchedness and misery into the sunlight of hope.

Gentlemen of the American Bar Association, I have presented to you in a dry and meagre way an outline of Italy's part in the war. But to you, who have perhaps seen the respect felt in America for the steadfast conduct of the war by the Italian people—hardly more than one-third of ourselves in numbers—and have felt as I have felt America's admiration for Italy's fighting men, who alone have in reality held the right of the Allied line for more than three years of war; and stand today ready to administer another defeat to the Austrian, I need hardly predict in regard to Italy, *Our Ally's Great Part in the War*, that the verdict of the future will be, "*Well done, Italy! You and your soldiers have won the gratitude and admiration of the world.*"

ITALY'S GREAT PART IN THE WAR.

REPLY OF

MAJOR GENERAL EMILIO GUGLIELMOTTI

TO ADDRESS OF BRIGADIER GENERAL GEORGE P. SCRIVEN, U. S. A.

I must confess that I feel a little shy here today; I dare say that never before have I experienced a sentiment like that, not even on the fighting lines. There, it was my own job, the job of the greater part of my life, I having been a soldier 35 years. Here, it is a very different thing: I am not an orator, and before my coming to this country I had never spoken in public; I had spoken only to my soldiers, to my boys, and that in Italian; and I can assure you that I know Italian very much better than English. Today, having the privilege to represent here the ambassador of my country, and the honor of speaking to such a distinguished American audience, I must speak English.

English? I call it so, but I doubt very much that you can agree with me. However, I take courage from three different sources: First, I feel rather at home here, because I remember how kindly I was received last year at your meeting at Saratoga; and because I feel that I am among friends and colleagues; as a matter of fact I am a lawyer myself, having been graduated as doctor in law at the Palermo University, alas, many years ago! Second, I rely upon your cleverness, your intelligence to make it comparatively easy for you to recognize your English through my poor construction and bad Italian pronunciation. Third, I feel that it is my duty to try to do my best; and I am trying.

And, on behalf of the Italian Ambassador, I express my best thanks to the American Bar Association for this Italian afternoon and for having appointed my friend, General Scriven, to speak about Italy and Italy's war. My country's immense effort, her great and perhaps, in some instances, decisive part in this great struggle for right and justice, and her terrible sufferings were not very well known in this country and only because of that, not very much appreciated. We Italians in this country, have been kindly invited many times to speak on this matter, but it was quite natural that our statements were a little suspected of

exaggeration and partiality. But you can rely upon the words of a gentleman, and upon the competence of a soldier like your American general, George Scriven. And to him I express, too, my best thanks on behalf of myself, of the Italian Ambassador and of my country. It is the second time, General, that I have had the fortune of hearing you speak about my beloved Italy, her rights, her deeds; and I am therefore able to judge how efficient are your words in making Italy better known in your great country. America and Italy must become thoroughly acquainted: to learn to know each other better, means to love each other better, to feel better the unity of aims and sentiments now, till the end—to the victory, and, after the victory, for ever!

General Scriven has told you how legitimate, high and pure are Italy's aims. Like all the Allies, she is fighting for liberty, right and justice; like France, she is fighting to redeem her own provinces lying bleeding, under barbarian heels, to shut the doors of her home now open in consequence of a dangerous and unjust boundary line imposed upon her by her secular enemy, Austria. This, German and Austrian propaganda has tried to represent in this country as imperialism! Imperialistic Italy? Had Italy been such it would have been very easy for her to accept the big and substantial offer of great territories made to her by the Central Empires, to buy her complicity first, her neutrality afterward. But Italy is not to be bought, and led—not by an imperialistic spirit but by the same spirit which led her in her previous war for liberty and nationality; she preferred to run, with honor, the risks and sufferings of a long war, than to win, with shame, territories bigger, perhaps, than anything, even victory, can give her. The Austro-German propaganda has represented Italy as imperialist. As an answer, Italy has made herself the head and leader of nationalities oppressed by Austria; and Roumanian, Serbian, Montenegrin, Jugo-Slav units are now on her front fighting side by side with her boys.

General Scriven has told you how Italy's neutrality helped France in August, 1914, enabling the latter to take from the Italian frontier to the Marne about half a million of gallant French soldiers, to win that great victory which saved Paris and civilization. Later, in May, 1915, Germany and Austria together were driving back the demoralized Russian armies, hoping to

crush them and so to be free to turn against France and win the war before England could be quite ready. In that dangerous moment, when the Central Empires seemed to feel very near the decisive triumph, Italy, also not fully ready, entered the field and obliged Austria to send to the Italian front the greater and best part of her army. I shall not dwell upon the following period of two and a half years, during which Italy's soldiers scored victory after victory, fighting in eternal snows, conquering the strong positions held by Austria, carrying, by hand, guns, ammunition, supplies, everything to the height of ten or twelve thousand feet, displaying always the best military virtues of endurance, bravery and discipline. I shall not dwell upon the misfortune of Caporetto: it was certainly influenced by German propaganda, but it is necessary to remember that Italy on a front, and such a front, longer than Belgian, British, French fronts together, was alone against German, Austrian, Bulgarian and Turkish united forces; was fighting, perhaps, one to five, was scarce of guns and ammunition; and General Scriven has just told you how the Italian soldiers, under these conditions, on a feeble line like the Piave River, making a wall of their breasts—ammunition sometimes of stones—stopped, single-handed, the Huns. Can you realize the meaning of that? Germany's aim was to crush Italy. Italy crushed meant the whole Austrian Army free for other purposes, meant another road through the Po Valley, and the Maritime Alps open to the very heart of France.

I shall not dwell upon the recent victory on the Piave: from documents taken from the enemy we know that Austria was quite sure of the victory, because she had thrown into the scale all her power, hate and determination; and Austria was utterly defeated, and the victory of the Allies has been, perhaps, the turning point of this war; after that, we came to the sunny side of things; and really sunny days have been the victories of the Allies, Belgian, British, French, Italian soldiers together, on the Franco-Belgian front, inspired by the brilliant, magnificent spirit brought over there by your boys, the American soldiers. And I am proud to say that not only directly have the Italian arms contributed to the common victory there, but indirectly also, preventing Austria from sending to the German front the 70 and more divisions she has in Italy.

I shall not speak about Italy's sufferings: it is enough to remember that she has no coal and no raw material in her soil, and has been obliged to obtain everything from abroad, paying very high prices and often handicapped by lack of shipping; but Italy glories in her sacrifices, and will suffer and fight to the last.

General Scriven has spoken to you about Albania. This has been a very dear topic to me, I having been for a full year chief of staff of the expeditionary forces there, and, in such a character, having been the head of military and civilian services. I arrived there in March, 1916, and found a little region with a poor organization, and left in March, 1917, leaving a rather big country fully organized. General Scriven has given you a clear idea of the things down there: I charge myself to tell some little stories, only to show you how that population appreciates Italy's efforts.

All the natives were very anxious to pay taxes: often people from without our boundaries came in and asked to pay taxes too, and this for two reasons: because it was the first time in their history that they saw their money spent in their own country for public benefit and welfare; because, paying taxes, they hoped to engage us to defend them from Austrians, to occupy their country, bringing them the blessing of our occupation.

I took special care of the schools. When I left Albania, we had opened all over the territory 150 schools, with about four thousand pupils, and General Scriven has just told you that they are now increased to ten thousand. In June, 1916, we ordered the summer holidays to begin in July; well, a committee of boys came to the general headquarters asking the commanding general, on behalf of their schoolmates, to keep the schools open through the summer, "because," they said, "we want to learn as quickly as possible"; of course the general granted very willingly their request.

For a long time we were not able to open schools for girls in the interior of the country: we had not available elements in the native women and it was not possible to send there our women teachers for lack of every elementary convenience in the little native villages and because of the dangers of the war. You know how jealous are the Mohammedans of their girls and how separated they keep them from the boys. Well, after a while, they

began to send their little girls to our schools for boys: splendid evidence of their confidence in us!

And in Albania, too, in the meantime, Italians and French are pushing the enemy back. I don't know what importance the Albanian or Macedonian fronts will have in the solution of the gigantic struggle; I don't know if the Allied armies, united in the name of civilization and democracy, will go on, in the near future from those fronts, or from the Franco-Belgian, or from the Italian front, or from all: but I know that everywhere the Kaisers, German and Austrian, united in their complicity, united in their punishment, will be beaten and forced to our peace. Our unity of command, unity of armies and navies, unity of resources, and, especially unity of sentiments and ideals, will bring us victory; and victory will come mainly from America, this great, powerful, strategic, economic, moral reserve not only of the Allies, but of civilization itself. Everywhere the Allied troops stand like brothers in arms, and Italy who is fighting side by side with her Allies on her front, on the French front, in Macedonia, in the Holy Land, and now also in Siberia and Russia, who is fighting against the common enemy in Albania and in Africa, has seen for months her gallant British and French Allies on her soil. And now she has been thrilled by a new splendid event: American boys are on her front to show the enemy what America thinks of Italy and Italy's aims!

Italy has stood, stands, and will stand, as a powerful and faithful ally. Therefore, as her flag waves with the Allies' flags on the fronts before the enemy, assuredly she deserves that her flag be here always shown with the flags of other Allies. Always, as everywhere you hoist and wave the glorious English and French flags to accompany your "Old Glory," let the beautiful flag of my country also be hoisted and waved. The symbol of its colors, white, green and red, into which our great poet, Dante Alighieri, read faith, hope and love, must now be dear to all the Allies: faith in the final victory, hope of peace and everlasting friendship, love of liberty and independence.

THE PRESENT VALUE OF COMPARATIVE
JURISPRUDENCE.

BY

FEDERICO CAMMEO,

PROFESSOR OF ADMINISTRATIVE LAW, UNIVERSITY OF BOLOGNA.

I esteem it a great privilege and honor to be called to address you. Among my fellow countrymen many eminent students, law professors, and leading lawyers, more conversant with your language and better versed in your law, could have been chosen. Yet the choice fell upon me; and I am proud of it.

Although this is a time more fitted for action than thought, although we must

“Stiffen our sinews and summon up our blood”
for the final contest before us, yet thought can never lose its empire entirely, and we are called to inquire into weighty problems which arise from the present war and from the settlement that the nations will require when the battle is over.

Many of these problems involve legal points. I will speak to you of one of them: the value that the comparative study of law possesses in the present moment; or, more briefly, of the present value of comparative jurisprudence. Great as is the worth of such research at any time, it acquires greater worth now; preparatory as it is to a sure basis for that league of nations that is the highest aim of the present war.

I will not dwell upon the work of comparative jurisprudence in ordinary times. Your country excels in such researches. Your treatises on private international law are based upon comparative inquiries relating to the municipal laws of every nation. One of your eminent jurists, John Wm. Burgess, is the author of a classical treatise upon Political Science and Comparative Constitutional Law. President Frank J. Goodnow edited a not less important work upon comparative administrative law.

In common times the researches in comparative jurisprudence have a theoretical value from two joints of view. They are the only means to attain a scientific knowledge of the law. One has

to inquire into the contents of the law of different nations; to ascertain similarity and dissimilarity of legal views; to establish what circumstances, ethnical, moral, political or economic attend the framing of the same and dissimilar rules. By a common process of induction one can so reach the causes that act upon the establishment of law. From another point of view, the researches in comparative jurisprudence afford the means to ascertain the universal unity of many legal institutions and notions common to every legal system; such as the notions of the sources of law (custom, statute, judicial precedents); concerning legal rights and duties; of persons corporate or incorporate; of things; of judicial acts (contract or will); of torts; of crimes; of rights of action; of estoppel or merger. Science in every branch of learning proceeds by generalization; and the widest generalization, the most perfect knowledge of juridical facts, is attained by comparative jurisprudence. As it has been said, comparative jurisprudence has the same theoretical value as the science of language; or comparative philology. But it also has a practical worth. By inquiring into the dissimilarity among laws of various nations, it shows what there is in them of good or of bad; what is to be rejected or to be retained and imitated. It is the surest basis of legal reform. Comparative jurisprudence is also the foundation of private international law. It is from this dissimilarity of the laws of different nations that spring the conflict of laws and the need of rules for the settling of such conflict.

But, as I have said, the researches in comparative jurisprudence acquire at the present moment an exceptional worth as preparatory to a well-grounded establishment of the league of nations. I do not wish to be drawn by the love of the question I am dealing with, to exaggerate its importance. In the establishment of the league of nations many political, moral and economic elements must concur other than those that can be supplied by comparative jurisprudence. We see now under our own eyes the lining up of circumstances which will help us to reach the devoutly wished for consummation. But I take for granted that unity of law on essential points is one of the conditions of an efficient working of the league of nations. First, it is to be held in mind that law is an eminently conservative force. The law of every nation has

been until now essentially autonomous and exclusive. Therefore it tends to counteract, rather than to foster, community of aims; that bond of hearty co-operation which must underlie a society of nations. Such centrifugal action of law acting against the centripetal forces that tend to join the nations in a league, is strengthened by an obvious fact. Around every legal rule of a given country, be it in itself ever so immaterial, is soon interwoven a knot of interests; a texture of social customs that are by themselves a hindrance to international co-operation. Be it sufficient to mention that trade between England and the Latin nations has been seriously handicapped by the different systems of currency and of weights and measures. Yet you certainly remember what strong opposition every attempt at reform in this subject has encountered in Great Britain.

Far from me be the notion that law is the only cause of that spirit of exclusiveness which has until recent times animated every nation; the causes of this fact have been, until this time, more far-reaching. They were to be found in the dissimilarity of race, of climate, of soil, of economic conditions, of social customs. But the influence of such causes is, in the present moment, practically disappearing. The Allies have already reached such a perfect knowledge of each other, such uniformity of aims, such a brotherhood of sacrifice, such a bond of common interests, that they are ready to waive in every essential point all spirit of exclusiveness. They are ready to form a nucleus of the league of nations. Such being the case, can we allow the persistence of a force, be it even a less important force, such as the dissimilarity of law, to oppose it or at least to encumber the framing or the working of the league of nations? To the lawyers of the whole world, to those of this country, in which the noble purpose has grown, belongs the duty to prepare, as a topic of the after-war period, the unification of the laws on every essential point of all the nations of the league. I say "on every essential point," because it is obvious that the efficient working of the league does not require the total unification of their laws. The future association of states does not aim to absorb or to destroy the nations associating themselves for a permanent peace. It aims to bind them for common action on certain fields of social and economic life, in order to afford them full security for free autonomous

development in other fields. The unification of law must not, therefore, go farther than is required for that purpose. I take it for granted that those branches of the law which are strictly connected with, and dependent upon, the main features of each nation that go to the root of its more peculiar ethnical, historical, political, economic tendencies, will remain outside the scope of unification. So it will be for constitutional law, for the law of domestic relations, for that of tenure of land, and of inheritance; for criminal law and for procedure, civil and criminal. The work of unification, I believe, will be confined to the law of ownership of moveable things, to the law of contracts and torts, to commercial and maritime law, and to some points of that branch of public law, which on the European continent is called administrative law. To sum up, I deem that unification should reach every field of law directly or indirectly connected with international trade. A world-wide trade will require world-wide legislation. The need of such unified legislation will be so much more felt, as the league of nations, according to the words of the President of the United States, aims not only to establish amity between nations, but also "to the removal of every economical barrier and to the establishment of equality of trade conditions among all nations consenting to the peace and associating themselves for its maintenance." Such a purpose not only requires unity of law, but also the establishment of a common legal organization directed to ensure unity of action. To ascertain which branches of the law must remain untouched and which must be subjected to unification, belongs to the science of comparative jurisprudence. And only that science is apt to indicate the middle course, to work out the desired unification with the least sacrifice of vested interests and with the least change of every nation's customs.

This is the particular value of comparative jurisprudence in the present moment.

Another question is to be put, and can only be answered according to the results of comparative legal researches. Is it actually possible to work out such unification of the law as is required for the efficient operation of the league of nations? Nobody can doubt that the formal system of the law is everywhere almost similar. But this is not sufficient to work out unification of the

law; there must be some kind of substantive similarity in the content of legal rules. Such similarity is to be found among the enactments of those countries that trace their historical descent from Roman law. But at first sight one feels tempted to doubt whether unification can be effected between those laws and the laws of England, of her dominions, of the United States, where the rules of the common law and those of equity prevail. I do not presume to deal with the momentous question of the scientific comparison of these two sets of laws. I deem it sufficient to submit some obvious remarks tending to show that the dissimilarity between Anglo-American law and the law of the continental countries of Europe is not such as to counteract the proposed unification if it is to be confined to such topics as are required for the time being. Far from me to depreciate the value of Roman law. It is a proud boast of my country that Roman law has grown on her soil; has been kept alive during the dark ages in her cloisters and in her schools; has been recalled to light in her universities; has formed the basis of many branches of her positive law. And I can confidently say that Roman law forever established the main lines between right and wrong, the technical rules of juridical thought. But it must not be overlooked that upon the present positive law of Continental Europe, as of the states of South America, many influences besides that of Roman law have acted during the centuries—the same influences that have acted upon many branches of Anglo-American law. First, it is to be borne in mind that the unification does not concern itself, as I have said, with every branch of law, but only with those that are connected with international trade. The autonomous and wonderful growth of Anglo-American law has acted, instead, upon those branches that lie outside of the scope of unification; upon constitutional law, tenure of land, domestic relations, inheritance, civil and criminal procedure. From another point of view, the continental countries of Europe were all subjected after the fall of the Roman Empire to barbaric invasions which brought to those countries laws not dissimilar from the Saxon and Norman law, the historical basis of English law. It is true that the barbaric laws were soon superseded by Roman law. But one must not overlook the fact that they have left some marks of transient reign, as upon the law of ownership of movable things

and upon the law of possession. It is more important to mention that commercial and maritime law, in many essential points, is of much later growth than the Roman law, and has no direct connection with it. Commercial and maritime law, in its present shape, dates from the Middle Ages. Its cradle was the Italian Republics of Amalfi, Pisa, Florence, Genoa, and Venice. A very interesting process of action and re-action relating to the commercial and maritime law ensures uniformity of legal rules in every country. As long as trade was in the hands of the Italian republics their law was paramount and every country adopted or imitated it. As soon as trade passed into the hands of other peoples, especially into the hands of England, she took the lead in commercial and maritime law and other countries sought there the model of their legislation. As for contracts and torts, Roman law reigned for many centuries in Continental Europe. But the connection between Roman law and the positive law of those countries was broken at many points by the French Revolution and by subsequent codification. The new ideas of liberty, equality and free competition superseded many of the principles of Roman law; as the same ideals acted in England and in the United States upon the common law. At last, that branch of public law that I have called administrative law, inasmuch as it concerns itself with international trade and rules, currency, weights and measures, patent and copyright, postal service, railroads, is of such recent growth and relates to topics so new, that it cannot have any connection with Roman law. In itself, as I shall show, this branch of law has been already subjected to attempts at unification in many respects.

The last point I wish to deal with relates to the systems and methods to be followed for the unification of law. To contribute to the solution of this question, I deem it proper to inquire into the many attempts at unification that have been made in recent times by means of international treaties. These attempts have been, as yet, absolutely desultory. They have been made without preconceived plan. Sometimes many of the civilized nations, or of those nations that were until now deemed civilized, have been parties to them. Sometimes only two or a few nations have agreed upon the work of unification. Sometimes the treaties dealt with important topics—sometimes with matters of no concern.

Present Value of Comparative Jurisprudence 651

The results on the whole have been trifling. But they offer a large field of observation; and many useful lessons may be drawn from them.

The absence of any preconceived plan is brought to light by the fact that, while the need of unification is more felt in private law and while many branches of that law offer a greater uniformity, the work of unification in these branches has been slight. It is quite useless to mention the well-known international treaties signed at The Hague on July 7, 1905, and which relate to the law of marriage, the status of lunatics and infants, and the execution of foreign judgments. They do not work any unification of law. They merely determine which of the municipal laws is to be followed in case of conflict. The only attempt at unification in matters of private law is found in the treaties at The Hague of January 23, 1908, relating to the collision of ships and their salvage. These two agreements do not work a total unification of the law. Every contracting state retains its own law. But if in the collision or in the salvage parties of different nations are concerned, a uniform and common law is to be followed.

The bulk of international agreements entered into with the purpose of unification relate to administrative law. The first attempt of this kind purporting to preserve order and public peace, can be found in the treaties signed by all the civilized nations for the suppression of piracy and of the slave trade. Every state which is party to these treaties is bound to enact, and has enacted, a similar statute against the two evils, and enforces it by land and sea. On analogous grounds, in 1905 and 1910, two agreements signed in Paris have been entered into by many states for the suppression of what is called on the continent, "white women trade," that is for the enrolment and immigration of women for illicit purposes, and against the sale of immoral books or printings. The contracting states are engaged to communicate to each other all valuable information; to enact laws against such immoral trade or practice, to confiscate every book or print falling within the meaning of the treaty; to assist the unfortunate women who require assistance. For the protection of the public health against infectious diseases, such as the plague or cholera-morbus, may be mentioned many treaties, signed between 1852

and 1899 in Paris, Dresden and Venice. Notice is to be given of the breaking up of such diseases; travel and trade between immune places are restricted; long and useless quarantine is forbidden, short periods of seclusion or medical supervision are substituted; disinfection is regulated. Every contracting state has already framed its legislation according to these principles. Two international boards are created in Constantinople and in Paris, to receive notices, and give advice without direct legislative or administrative power.

A few words about the international agreements concerning themselves with copyrights, patent rights and trade-marks. (Berne, September 9, 1886. Berlin, November 13, 1908. Washington, June 2, 1911.) These treaties are well known in your country which have been a party to them and has efficiently contributed to their framing. I will, therefore, confine myself to the following remarks: These treaties do not realize a total unification of the law of patents and copyright. They prescribe the main lines of the legislation of every contracting state and leave the details to each municipal law. This is an evident defect. Yet these agreements are noticeable because they effect an international union of most of the civilized states with a common executive board. For the sake of showing how international agreements have attempted to unify the law upon the most divergent topics, I will mention briefly the treaty of Berne, November 3, 1881, against the phylloxera. The treaty between some states of Continental Europe forbidding the use of poisonous white phosphorus in the manufacture of matches; two treaties between Italy and France, and Italy and the United States (Paris, June 18, 1910; Washington, July 3, 1913) concerning factory laws; the agreement signed in Paris, September 11, 1909, relating to circulation of motor cars. I will, instead, dwell upon the treaties concerning the circulation of wealth which will have a much greater importance for the solution of the problems arising at the close of the war. From this point of view the treaties concerning the postal service (Rome, May 26, 1906), telegraphic service (London, 1903), wireless telegraphy (London, July 5, 1912), and railroads (Berne, October 14, 1890) deserve mention. The three agreements first named were entered upon between most of the civilized

countries, the United States included; the treaty relating to the transportation of goods on railroads was agreed to only by some of the states of Continental Europe (Italy, Germany, Austria, Belgium, the Netherlands and Switzerland). According to these treaties, letters, post-parcels, telegrams or goods forwarded from any contracting state are to be carried to any other contracting state. The treaties not only prescribe uniform legislation concerning the contract of carriage, but frame also in every detail the draft of the laws to be enacted. To the municipal laws of each state it is left only to establish the rules for the management of post and telegraphic offices or of railways and strikes, for internal taxes. A common international board is created for the supervision of giving and receiving notices and settling accounts between the different states. On these same grounds is remarkable, as a model, the agreement of Paris, May 29, 1875, entered upon between many continental states of Europe and relating to the adoption of the metrical system of weights and measures. Also in this case a board is created in Paris to preserve the standard weights. I may mention also as a typical instance of law unification, the treaty of Paris in 1885, concerning the adoption of an uniform standard of coin. To this treaty Italy, France, Greece, Belgium and Switzerland were parties. Some of its clauses are of real worth. Every contracting state is bound to keep a decimal coinage system. Decimal moneys of each state are legal tender in every other contracting state. Thus far the agreement is open to no criticism; and it is to be wished that a similar treaty may be agreed upon by all the nations. But the treaty resolved itself into the question of the double standard, gold and silver; adopted both and tried, with unlimited coinage of gold and prohibition of the coinage of silver, to keep a parity of value between the two metals. On this point the treaty proved a failure. At last a very instructive instance of international agreement is that of the treaty of Brussels, March 3, 1902, and August 5, 1903, entered into between certain sugar-growing countries of Continental Europe and concerning the suppression of a typical case of dumping. Dumping found governmental help either directly by means of export premiums or indirectly by means of affording to manufacturers such favorable conditions in the home market as to empower them to sell sugar at very low

prices on the foreign markets. Usually this was done by affording protection to manufacturers in the home market, with low excise duty and a high import duty. Such practices were prohibited by the last-named treaty. Every contracting state was entitled to forbid the importation of sugar from such countries as disregarded the clauses of the agreement.

Summing up the results of previous experience, I conclude as follows:

(a) That a general plan of unification of law as a basis of the efficient working of the league of nations, is easily to be realized, since considering that in many cases and without any fixed plan, such unity has been attained.

(b) That no insuperable hindrance to such aim, not even in the most delicate matters pertaining to sovereignty as coinage and taxation, is to be feared, such matters having already formed a topic of more or less extensive unification by international agreements.

(c) That the stages of the process of unification are the following:

1. To establish rules available when two parties belong to different states without changing or touching the municipal law of each state;
2. To establish by international agreement the main lines of law upon a given topic, leaving to each state to work out the details by separate enactments;
3. To establish in every detail the rules required for the unification of law;
4. To create, in addition to the established rules, an international board for the supervision of the workings of unified law. As yet no legislative or executive power has been conferred on such a board.

I presume to say that according to previous experience, such will be the future process of unification of those world-wide laws as are essential to a pacific and sure world-wide trade among the nations associated by a common bond of stable amity. I shall not dwell upon the details and the extension of such process. I do not wish to tire you with dry facts or with tedious forecastings about the painstaking efforts that the great work of social and international reconstruction will exact from us. It is better to

look, not upon the anxious period during which the work is to be done, but to the happy epoch when the work will have been accomplished. Nobody can doubt that the Allies will succeed in every one of their plans. Everybody has faith, unshakable faith, in the triumph of the Allies, because

“Thrice is he armed that hath his quarrel just.”

And we perceive already that the history of this war has come to a turning point, and that a new era dawns for mankind. From today we can see, with unfailing eyes of hope and faith, the happy moment in the not distant future, when the dream of many generations of men, of many leading spirits, the ideal for which so many noble lives have been spent and lost, will be realized; when under the shield of a common bond of peace every nation will freely develop its own moral tendencies and economic forces, when in things essential, one aim, one love, one law, will reign over mankind; when the glorious and proud motto of your commonwealth will be the motto of the commonwealth of nations: “*E Pluribus Unum.*”

THE HIGHER LAW.

BY

JAMES M. BECK,

OF THE NEW YORK BAR.

In inviting your patient attention to a necessarily hasty consideration of the higher law, I must first anticipate the question as to whether the higher law exists except as a metaphysical abstraction of generous idealists.

In addressing myself to this preliminary inquiry, I must first define what I mean by a "higher law." If it have any existence it must mean something more than the sense of moral obligation which each normal human soul, as an individual, owes to the Supreme Being under any form of religion. A law, in the sense in which jurists use the term, must mean a clearly recognizable regulation, which imposes upon men collectively definite obligations and to a greater or lesser extent compels compliance therewith. It seems to me, however, a narrow view to hold that nothing can be a law unless it is promulgated by the authority of a political state and is cognizable in its courts of justice. In a narrower sense this may be so, but the laws which regulate human conduct are not restricted to those of the political state.

To the eye of the imagination, as Proudhon saw as early as 1845, there is in human society, as developed by civilization, a "living being, endowed with an intelligence and activity of its own, and as such an organic unit."

Long before Proudhon, a greater jurist and philosopher, Francis Bacon, wrote that in human society there was a reign of law beyond that effected by union of sovereignty or pacts of states. He added, "there were other bands of society and implicit confederations," and if my auditors will start with the conception of human society as an organic unit more comprehensive than the political state, which is only one of its organs and subdivisions, then it will be clear that outside of the circle of political laws and to some extent overlapping the domain of positive state-made law, there is a large body of human regulations having their

origin in the common conscience of mankind and possibly affecting human conduct even more vitally than the regulations of the political state.

I am quite aware that the school of political jurists, such as Austin, Hobbes and Bentham, have disputed the application of the word "law" to this great body of regulations, to which Austin gave the term "positive morality" and which German jurists designate as "*Sittlichkeit*" and "*Moralität*." I have no disposition to enter into this controversy and to make another fruitless attempt to distinguish between various shades of meaning suggested by the word "law." In this time of "blood and iron," such metaphysical subtleties are of little value. Indeed, I should not have selected the subject if I had not been deeply impressed with the belief that the maintenance of this higher law is in the last analysis the supreme issue of this titanic war and that its vindication should and probably will have a potent influence upon the great problems of a just and durable peace. Let me content myself by justifying my application of the word "law" by a single illustration.

When the Titanic went down, all its passengers became immediately and instinctively conscious of a regulation that, in saving their lives, women and children should have the first preference. Who made this law? No legislature ever enacted it and no sovereign state ever gave it sanction. It was not the result of any contractual agreement, for probably few of the ill-fated passengers ever considered the question until the terrible exigency suddenly confronted them. It did not arise from utilitarian considerations, for it is probable that the lives of the male passengers were at least as valuable to human society as those of the women and children. The law was something more than a sense of individual morality. It had compelling power. All were conscious of its obligation and all obeyed it. Its instantaneous recognition and the loyal acceptance of its results, which meant death to many of the passengers, shows that it was due to a great primal instinct which, notwithstanding the biologic law of natural selection and the struggle for existence, requires the strong to have compassion on the weak.

Assuming that the word "law" can be properly applied to such recognized regulations of human conduct, it remains to consider

in what respect its characterization as the "higher law" can be justified. And here again the illustration of the Titanic helps our reasoning, for the rule of conduct which was then put into effect was regarded as a fundamental decency of human life greater even than the powerful instinct of self-preservation. Such laws are higher, in the sense that they are primal and fundamental laws. They constitute the great unwritten constitution of human society. They are antecedent to all laws of the state and indeed the latter are but the imperfect expression of the higher law of morality. As the planetary worlds are evolved out of the nebulae, so the laws of the state, especially such as are based upon moral rather than utilitarian considerations, are evolved out of these fundamental decencies of human conduct, and as I will presently attempt to show, the systems of jurisprudence with which we are most familiar, the Latin and English, have always taken into account in the development of legal institutions the primary claims of the higher law.

Let me next attempt to show the evidences of the higher law, as they have existed in human thought and institutions, time out of mind.

If there be one thing upon which the wise and just of all ages and of all nations have been agreed, it is that there is, distinguished from the law of political states, a higher law which in a very potent way affects and controls the destinies of men.

We find abundant evidences of it in the great mythologies of the ancient world, which represent in the truest form the moral philosophy of the primitive races. The mythology of Greece saw the influence of the gods in all phenomena, physical, social or moral. Any uniform sequence was regarded by them as due to the law of the gods. Among these deities in the Homeric times was Themis, the goddess of justice. Her decrees, "themistes," were the result of a primal law, to which not only men, but even gods were compelled to conform.

The sturdy and virile mythology of the Norsemen represented the same truth and in the great Saga of The Ring, it is to be noted that the theft of the gold brought a curse to all into whose hands it came, even though the recipient of stolen goods was the supreme god, Wotan; and it was not until the gold, in the form of the Ring, was restored to the Rhine-maidens, that the curse was lifted

from gods and men alike. Thus the great moral truth of retributive justice was taught from the earliest ages and it seems an infinite pity that the German people, who glorified the Saga of the Ring with Wagner's immortal music, could not have been more deeply influenced in recent times by its moral philosophy.

Passing mythology, as evidencing the moral conscience of prehistoric ages, and turning to the sacred writings, which still dominate the conscience of mankind, we shall see an even more striking recognition of the existence of a primal law, which existed independently of the regulations of the political state and was paramount thereto. No nobler recognition can be instanced than the sacred writings which constitute the supreme contribution of the Jewish race to the world. While in the Mosaic writings God was only a tribal God—one of many—yet later on in the times of the Chaldean and Assyrian invasions, the noble conception dawned upon that race of a single God, Who ruled all mankind with infinite justice and patience and compassion. Whether we turn to the Lamentations of Jeremiah or the Psalms of David, or the fiery invectives of Isaiah and the other Prophets, we find again and again the assertion, in language of infinite beauty and power, of a supreme law-giver and a supreme law, to which all men and all political states must conform their conduct.

The supreme recognition of this higher law came later from the Great Teacher, whose Beatitudes remain its most perfect expression. The golden thread, which runs throughout the teachings of Christ, was the superiority of the higher law to the laws of the Jewish state. His constant protest was against that too-rigid adherence to state-made law, which sacrificed the spirit to the letter and failed to recognize the primal truths of the higher law. Rarely did He speak in terms of invective. His bitterest reproaches were addressed to those too-rigid lawyers of an ecclesiastical state, who regarded state-made laws as ends in themselves, and not as means to an end. He was careful to emphasize that His kingdom was not of this world and that His system of morals was based upon a higher sanction than that of the state. The prayer we lisped in childhood, "Thy kingdom come, Thy will be done," is the recognition of this higher law. While the Great Teacher Himself made no laws and founded no

kingdom, yet His appeal to the higher law was of such potent influence in shaping the destinies of man, that, as Richter has said, "With His pierced hands, He lifted the gates of the centuries off their hinges and turned the stream of the ages into a new channel."

In all history there is no greater manifestation of the higher law than the fact that the Galilean teacher has more powerfully influenced the destinies of men than has the universal Roman Empire, of which He was but a citizen, and which was the greatest governmental embodiment of law that the world has even known.

Turn from the sacred writings of the Jewish race to those of the most intellectual race in recorded history, Greece. We here see the higher law vindicated with incomparable power in the moral philosophy of the three great dramatists, Æschylus, Sophocles and Euripides. These were the Greek prophets. The constant theme of their tragedies is that all men and all political institutions are subordinate to the operations of the higher law, whose retributive justice was called Nemesis. The terrible character of this retributive justice is illustrated by Sophocles in his great Theban trilogy, for he teaches us especially in *Cedipus* that even an unintentional violation of the higher law by an innocent man must be atoned for. The argument reaches its greatest height in the noble play of *Antigone*, where the conflict between the law of the state and the higher law is emphasized. The brother of *Antigone* had committed a crime against the State of Thebes, and by its laws his body was denied the final dignity of burial. In defiance of the laws, *Antigone* buries her brother, in obedience to the call of affection and the dictates of humanity. The king, who incarnated the power of the state, demanded of her whether she had transgressed its sovereign laws, and to that *Antigone* nobly replied:

"Yes, for that law was not from Zeus, nor did Justice, dweller with the gods below, establish it among men; nor deemed I that thy decree—mere mortal than thou art—could override those unwritten and unfailing mandates, which are not of today or yesterday, but ever live and no one knows their birthtide."

The Greek conception thus assumed that there existed above all state-made laws a higher law of retributive justice, eternal,

immutable and from whose workings neither god nor man could escape.

Five centuries later the greatest of the Roman jurists, orators and essayists, Cicero, spoke in the same terms of a higher law,

"which was never written and which we are never taught, which we never learn by reading, but which was drawn by nature herself."

In Rome this was the especial teaching of the Stoic school, and of the great moralist, Seneca, and it exercised, as we shall presently see, a profound influence upon the development of the noblest body of law, the civil law, and through it upon our Anglo-American system of jurisprudence.

Now turn from the classic Tiber to the lovely Avon. We find again that the supreme genius of all poets and dramatists accepted in his great tragedies the same theme. Nowhere does he illustrate it more beautifully than in the Merchant of Venice, for in the trial scene he takes great pains to emphasize that, as a matter of strict law, Shylock was right in his contention. Venice was a commercial state and its material welfare depended upon the sanctity of contracts and the stability of precedents. Therefore, Portia, having sustained the legal justice of Shylock's contention, turns to him and says:

"Then *must* the Jew be merciful."

To emphasize the significance of the word, "must," Shylock repeats it and thus challenges the existence of the higher law:

"Upon what compulsion *must* I, tell me that."

Portia does not suggest that mercy is a matter of grace, but that its mandate is greater than that of a Venetian Doge or the Council of Ten. The usurer has his legal right to the penalty, but the higher law compels him to surrender that right. Portia thus announces the higher law:

"'Tis mightiest in the mighty; it becomes
The throned monarch better than his crown.
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above the sceptered sway,
It is enthroned in the hearts of kings,
It is an attribute to God himself."

With incomparable insight, Shakespeare put this vindication of the higher law into the mouth of a woman, one of the noblest of his heroines, for in the permanent differentiation in the social office of the sexes, which no law or constitutional amendment can ever wholly override, the woman is the peculiar advocate and high-priestess of the higher law. In her care peculiarly rests the ideal and the abstract. To man, as the constructive agent of human society is given the concrete and practical.

Turning from the doctrines of these great teachers, to the legal institutions of mankind, we find the most striking evidence of the higher law. While analytical jurists of the Austin school may deny its existence or its relation to the laws of the state, the fact remains that as the rocks show unmistakable evidences of the glacial movements, so our state-made institutions and laws bear equally striking evidence of those mighty moral movements which, like the glaciers at the beginning of the world, have swept over its surface and determined the form and shape of continents and oceans.

In states which, like the Jewish state, were a combination of church and state, the influence is naturally more evident, but if we take Rome the greatest of all secular states in history and examine its body of law, the noblest that man has ever developed, we shall find the clearest recognition of the higher law as an organ of society, of which courts can and should take cognizance.

Thus arose the distinction between the *jus civile* or the law of the state, and the *jus naturale*, or the law of nature. The Roman jurists recognized that while the local law of the state was of value within its own scope, yet there was on occasion the necessity of applying a system of laws which it conceived to be common to all mankind. "All nations," says the institutional treatise written under the authority of the Emperor Justinian, "who are ruled by laws and customs, are governed partly by their own particular laws and partly by those laws which are common to all mankind. The law which a people enacts is called the civil law of that people, but that which natural reason points for all mankind is called the law of nations, because all nations use it."

This was the law of nations, but it must not be confused with international law, for the latter, so far as it arises from the agreement of nations and regulates their mutual intercourse, while it

is one manifestation of the higher law, is only a part of it. To the Roman jurists the law of nations represented something more than any code of nations. They conceived of human society as a single unit and they assumed the existence of a universal law, which was both antecedent and paramount to the law of Rome. In this the jurists of the Empire were powerfully influenced by Seneca and his school, and out of it grew the great conception of *Aequitas*, or Equity, which in its last analysis is the most concrete manifestation of the higher law, either in the civil or in our own system of jurisprudence. The essence of equity was that the necessarily rigid laws of the state would at times work injustice and that in such cases certain primal truths must be invoked to moderate the rigor of the law. These primal truths were never wholly codified but were summed up in the word, "equity" or justice. We all know how profoundly the Roman conception of equity influenced the development of law in England and the United States. Our system of equity jurisprudence began in the reign of Edward III and assumed that there was in the king a residue of power which enabled him to overrule the usages of the common law, or even the statutes of Parliament by resort to certain primal principles and fundamental decencies, epitomized in the word "equity." The great maxims of Equity are but expressions of this higher law. As in the famous case cited from the Merchant of Venice, the creditor was entitled to the penalty of his bond, yet equity would forbid it when the penalty was unconscionable.

"He that asks equity must do equity." What is this but the command of the Great Teacher that we must love our neighbor as ourselves.

In the time of Edward III, the Lord Chancellor would permit nothing, the laws of the state to the contrary notwithstanding, that was inconsistent with "*honestas*" or honesty. Thus the idea of an abstract justice, something higher than the letter of the law, became lodged in our system of jurisprudence and thus we can fairly claim that both our system of equity jurisprudence with its invariable emphasis upon abstract justice and the equity system of the civil law, from which we in part derive it, form the clearest recognition by legal systems of a higher law.

Another recognition of this higher law could be given, if time permitted, in the relation of the Roman church to the political states of Europe, up to the time of the Reformation and in some instances since then. Naturally the church asserted itself as the greatest organ of the higher law, as the German emperor recognized when he stood barefooted in the snow-covered courtyard at Canossa awaiting an audience with Hildebrand. Chivalry, that fairest daughter of the mediæval church, which so profoundly affected the destinies of mankind, owed its direct inspiration to the higher law. This wonderful institution was not only international, but also supernational. It paid little heed to the law of the state. Its object was to vindicate certain fundamental decencies in life and in its best estate it sought to meet the requirements of the higher law as voiced by the Prophet Micah:

"What doth the Lord require of thee? but to do justly, and to love mercy and to walk humbly with thy God."

The allegiance of the young knight, when at the altar of God he knelt and received his sword and spurs, was to a higher law than that for which his or any political state stood.

In the jurisprudence of France there was until the time of the Revolution the same manifestation of the higher law. Those who believe the principle of *Marbury vs. Madison* to have been a novel contribution to the science of jurisprudence, may well remember that for at least two centuries before, no law of France acquired validity until it was "registered" by the judiciary, and if it appeared to the French courts that the proposed law was against common reason and justice, the courts would refuse to register it. If the law-making power then refused to withdraw, the king summoned a *lit de Justice*, in which he heard and considered the objections of the judges, and if he refused to yield the judges would often refuse to enforce the law; and if they in turn refused to register the law, it at times happened that the king, to compel registration, would send the judges to the Bastille with a *lettre de cachet*. Generally, however, the courts prevailed.

It is interesting to Americans to remember that the same plan was embodied in the first draft of the Constitution of the United States, which proposed that the executive and the national judiciary should constitute a "Council of Revision" with the power of vetoing all legislation, both in the federal and state legislatures.

It is probable that in this suggestion, Mr. Randolph, the author of the first draft of the Constitution, followed the French plan, but it was wisely rejected by the Constitutional Convention, and was restricted to a qualified veto of the President. In this connection let me add that the recognition of a higher law should not carry with it any confusion between the executive and judicial branches of the government, or between the functions of a political state and those of organized society, which operate outside the sphere of political government and could not be confused therewith without moral anarchy. Human society as well as the political state has its limitations and the scope of each is determined by the good sense and common conscience of mankind. Indeed the true genius of government is in the nice determination of those regulations of human conduct which should be left to the political state and those which should be left to the potent influence of society in general.

Another striking recognition of the higher law in our legal institutions is found in constitutional limitations, whether express or implied. The idea of a restraint upon the power of the political state, to compel its conformity to certain fundamental verities, is as old as civilization, as continuous as its history, and has its origin in the axiom of the higher law, that any state-made law which is grossly repugnant to natural justice, violates the unwritten social contract and is null and void. Locke, Montesquieu and Rousseau all base their political philosophy upon an assumed state of nature, and an implied contract, under which individuals only surrendered their freedom to organized government with a reservation of certain inalienable rights. Those rights constitute the great unwritten constitution of human society. I need hardly remind you how potent was the influence of this school of philosophy upon Thomas Jefferson when he drafted the Declaration of Independence. He expressly asserts the existence of the higher law, when he says that "a decent respect to the opinions of mankind" requires a nation to justify its acts by the fundamental and universal principles of morality.

This idea was much older than either Locke or Rousseau or Jefferson. It is older than the English law. Traces of it can be found in the Roman law, even during the autocratic power of the emperors. Every system of jurisprudence which is derived in

part or in whole from the civil law, shows some evidences of this implied restriction upon arbitrary power, whether of kings or majorities. The doctrine of the omnipotence of Parliament, as we understand it today, was not an accepted principle of English constitutional law when Jefferson wrote the Declaration of Independence. On the contrary, the great masters of the common law, including the four Lord Chief Justices, Coke, Hobart, Holt and Popham, all supported the doctrine of the common law, as laid down by Lord Coke (Bonham's case, 8 Coke Reports, 114), that the judiciary had the power to nullify a law, if it were "against common right and reason."

This doctrine was accepted by the constitutional lawyers of the Colonies in our struggle for independence, for when they sought to invalidate an act of Parliament, which imposed a tax on tea, they could not reasonably pretend that the invalidity of taxation without representation was a recognized part of the constitutional system of England, but they did contend that such taxation was tyranny because it violated a fundamental principle of the "higher law" of liberty, that no man could be compelled to pay tribute except when granted by his representatives. Neither then nor even at the present day does the principle of the invalidity of taxation without representation admit of literal application. The United States has always taxed its territories and colonial dependencies without any voting representation.

The Pilgrims, who signed the famous compact in the cabin of the Mayflower, did not covenant to obey any laws that the majority might dictate, but only such as were "just and equal."

When the founders of the republic framed the Constitution of the United States, they took good care to write the higher law into that Constitution in order that the restraints upon arbitrary power, which in England were real, although unwritten, should in the new republic be evidenced by a written contract. The great restraints upon legislation, both of federal and state governments, are clear recognitions of a higher law. Thus the fifth and fourteenth amendments, with their prohibition of any legislation which takes away life, liberty and property "without due process of law," are but repetitions of the prohibition of the great charter, as to "the law of the land." The Barons at Runnymede did not attempt to define that law. What

they had in mind were certain primal verities of personal liberty, upon which their freedom depended, and similarly the framers of the Constitution never pretended to define what they meant by "due process of law."

Daniel Webster, in the famous Dartmouth College case, gave the classic definition of the "law of the land," the phrase from which "due process of law" was derived, as follows:

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

Almost contemporaneously with this historic argument the Supreme Court, in the opinion by Mr. Justice Johnson, gave a more felicitous definition, when he said:

"As to the words from Magna Charta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this, that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and *distributive justice*."

This last expression was significant, for "distributive" justice was one of the definitions of the higher law as expounded by great jurists in times past. Thus Puffendorf defines it as the species of justice which gives to each member of society his rights under the social contract—the social contract referring to the state of natural justice from which all legal institutions were presumed to evolve. The essential idea of such distributive justice was expressed in the opening words of Justinian's Institutes:

"*Justitia est constans et perpetua voluntas jus suum cuique tribuere.*"

If this be somewhat vague, yet justice is also so indefinite as to be undefinable.

Among our formal legal institutions, the greatest concrete manifestation of the higher law is that which we call international law. This international code, which to some extent impairs the sovereign power of nations and which, until this war, had brought them measurably nearer to the "Parliament of

man and the federation of the world," is a striking manifestation of an authority to which even sovereign nations must yield. A greater part of this law has consideration for those fundamental decencies of human life which cause the strong to respect the weak and, therefore, seeks to save women and children and all non-combatants from the horrors of war. Under this "higher law," even the vanquished has his rights as against the victor, and the mighty spirit of justice and compassion which breathed through the two Hague Conventions marked the high-water mark of human progress, until Germany ruthlessly destroyed the dikes and flooded the world with a torrent of primitive barbarity. While the higher law is something more than international law, yet the latter is its most noble manifestation, for it points the way to that "far-off divine event, toward which the whole creation moves," when the rules of justice, as formulated by the common conscience of mankind, shall have complete sway throughout the world.

It is Germany's greatest crime that for the time being it has impaired but not destroyed this divine ideal, which in this time of blood and iron constitutes the best hope of the human race. Her consistent conduct, from the beginning of the world war, has been a ruthless challenge not only to the paramount authority of the higher law, but a flat denial of its very existence.

This leads me to a graver inquiry. Are all these teachings of the spiritual leaders of mankind and its ripened institutions mere rhapsodies of words? Were the wise and good of all ages cheating themselves with empty visions or, treading the mountain ranges of human observation, did they see the dawn of the perfect day more clearly than we who dwell in the darkened valleys of this working-day world?

History replies that the greatest evidence of the higher law is to be found in its records. Through the long drama which has been enacted on the boards of this "wide and universal theater of man," are as clearly seen the workings of retributive justice as in the tragedies of Sophocles or Shakespeare.

Time does not permit me to demonstrate the truth of this observation. I must content myself with two instances. Let me take one especially within our knowledge. In the year 1850, a very notable debate took place in the Senate of the United States.

The three greatest leaders of thought of the middle period of the republic—Clay, Webster and Calhoun—all of whom were then approaching the end of their careers, participated in it. The subject of the debate was the geographical restriction of slavery and the extension of the fugitive slave law. That the Constitution recognized slavery could not be gainsaid, and that its maintenance as an institution within certain geographical restrictions had been solemnly agreed to by all political divisions of the United States was equally undeniable. The two great parties and nearly all responsible leaders of public opinion were then opposed to the abolition of slavery, and yet parties and statesmen were subconsciously aware of a mighty power, driving them to an inevitable end. In a vain attempt to maintain the *status quo*, Clay proposed his great compromise of 1850. Webster favored the compromise in the speech of March 7, 1850, and the maintenance of slavery was further supported by that most acute and profound constitutional lawyer, Calhoun. In the course of the great debate, the young Senator from New York, William H. Seward, said:

"The Constitution devotes the national domain to union, to justice, to defense, to welfare and to liberty; but there is a higher law than the Constitution."

The expression the "higher law" was not original with Seward. He had borrowed it almost verbatim from an address which Channing had made eight years before, on "The Duty of the Free States." The suggestion of a law higher than the Constitution quite naturally convulsed the nation and yet, within thirteen years, Seward had countersigned the Emancipation Proclamation and a year later Lincoln, who, at the beginning of his administration, had disclaimed any intention to interfere with the institution of slavery, proclaimed in his second inaugural his solemn belief that the fratricidal war was but the inexorable working of a "higher law" which set at naught the plans and expedients of statesmen and parties.

The inescapable judgment of the Nemesis of history is even more strikingly manifested in the titanic war now in progress, the greatest drama ever enacted on the stage of the world. The first act of that tragic drama began in 1740, and the curtain is now rising on the last act. When it finally falls it will be seen that the

higher law has again overridden the purposes and plans of Chancellors and Prime Ministers, of Presidents, Czars, Kings and Emperors and made of them mere pawns upon the chessboard of history.

To appreciate this, it must be remembered that the roots of the present titanic war go much farther back than the tragic deed of Sarajevo. The true root of this upas-tree was the indefensible seizure of Silesia by Frederick the Great, in 1740. Had there been no condoned rape of Silesia there would have been no rape of Belgium. In that year a robber king had ascended the throne of a robber state, who, as Macaulay said, was "without fear, without faith and without mercy." Like a thief in the night and in violation of his solemn promise, he invaded Silesia and stole it from Austria. The act was the most naked and wanton challenge to the higher law in modern times, and the leading European nations sprang to arms. Had the Hohenzollern then been defeated and deposed, the present world war might never have been. But unfortunately at the very moment of the Allies' triumph, Russia in 1762 not only crumbled, but deserted to the enemy. Weary with the terrible slaughter, the Allies compromised the great ideal of justice, made peace with Frederick the Base and confirmed his wicked seizure of Silesia.

Here were two ideals, each false but differing greatly in degree.

One was that of Frederick the Base, that the state was above morality and the only limit to its aggressions was that of physical power.

The other was the false pacifism that taught that it were better to condone a wrong, even though the higher law were sacrificed, than to inflict upon mankind the scourge of war.

The ideal of Germany was "power at any price," that of the Allies, "peace at any price."

These two principles profoundly impressed the whole course of European politics, until the inexorable workings of the higher law, seemingly moving with a leaden heel, but striking with an iron hand, wrought in our time the terrible expiation of the most destructive war that history has recorded.

Frederick the so-called Great, encouraged by the condonation of the Silesian crime, made common cause with Russia and

Austria, in the three partitions of Poland, at the end of which that noble kingdom was destroyed.

Then came the French Revolution and the Napoleonic Wars, in which the perverted ideal of physical power was invoked by an even greater master of the art of war than Frederick the Great. Napoleon wantonly invaded nation after nation and again and again, to secure peace at any price, his ruthless violations of the higher law were condoned, but each condonation only whetted his appetite for universal dominion. Finally the greatest of the Cæsars fell from exhaustion and died at St. Helena, "the mighty somnambulist of a shattered dream of universal empire."

For a few decades civilization had a breathing spell and then the Hohenzollern dynasty, which had all the vices of the Napoleonic régime and none of its constructive virtues, again entered upon its career of rapine and again the civilized world, in the supposed interests of peace, condoned its shameless felonies. It violently wrested Schleswig-Holstein from Denmark and no nation lifted a hand to protect that helpless power. Austria was next assailed and then a quarrel was deliberately picked with France, and after her defeat Alsace and Lorraine were arrogantly demanded by the ruthless conqueror.

France then appealed to the leading nations of Europe. M. Thiers vainly besought the governments of France's present Allies, to prevent this great wrong. All turned a deaf ear. It was not their quarrel. France could be left to perish. Our country, still pursuing a policy of isolation which though admirably adapted to its period of infancy, was unworthy of our maturity, gave no heed to our ancient ally, without whose generous aid the United States might never have become an independent nation. The world deserted France in her hour of extremity and the world is now paying the penalty. Had the civilized state of Europe and America, in 1871, compelled Prussia to respect the higher law in her dealings with France, this world war would probably never have been.

A new problem had now arisen with the development of commerce in southeastern Europe. Acting upon the spirit of false pacifism, the European nations preferred to tolerate Turkish cruelties to Christians, to the vindication of Justice by the sword. Turkey had consistently tortured and almost destroyed the

Christian nations of southeastern Europe. The cries of the butchered Armenians and tortured Serbs in the Balkan Peninsula called aloud for vengeance, but Europe in the supposed interests of peace turned a deaf ear.

In 1877, Russia took up the fallen standard of humanity and in defense of the victims of Turkish misrule advanced to the gates of Constantinople. Had the European nations at that time had as much concern for justice and humanity as they had for the material ease of a false peace, this world war would have been prevented. But, unfortunately, England, contrary to the counsel of many of its noblest statesmen, such as Gladstone, Earl Derby and John Bright, intervened to serve Turkey, and Disraeli took his "thirty pieces of silver" by guaranteeing the perpetual integrity of Turkish territory in Europe in return for the cession of Cyprus.

To preserve a false peace, the Congress of Berlin was called in 1878, and at the head of the council table the most sinister personality of the nineteenth century, Prince Bismarck, sat in the rôle of an "honest broker," to use his own expression. These distinguished diplomats and statesmen vainly thought that they could preserve the peace of Europe by a sordid exchange of territory, even though the adjustment stifled the cries of the dying Christian states in southeastern Europe. Disraeli returned to London in triumph and was acclaimed for bringing back "peace with honor," but we now know that he only brought the seeds of a terrible war. If England could have foreseen the conditions forty years later and beheld the very flower of British youth perish at Gallipoli, the thoughtless acclaim which welcomed the return to Disraeli would have died on her lips.

It was solemnly covenanted in that treaty of 1878 that the *status quo* as then established should not be altered, except with the consent of all the participating nations, and yet in 1908 Austria boldly annexed Bosnia and Herzegovina and when the other European nations attempted to intervene, the German Kaiser ostentatiously ranged himself by the side of his imperial cousin, as a "knight in shining armor." The counsels of cowardice prevailed. Again a false pacifism induced the European nations to accept this denial of the good faith of treaties and again their statesmen in a spirit of smug complacency felt that they had preserved the peace of the world by sacrificing justice.

This constant condonation of offenses against the higher law in the supposed interests of peace, emboldened Germany and Austria to plot their treacherous and cowardly coup of 1914. The "wheel had come full circle." Russia and France sprang to arms and when the Hohenzollern crossed the frontier of Belgium, Great Britain abandoned its policy of peace at any cost, by staking the existence of its empire to defend Belgium.

Had the other leading nations of the world followed their course, the war would either never have begun, or would have abruptly ended. This greatest catastrophe of the world, as it is the greatest crime since the crucifixion of Christ, would never have happened, with its loss of the lives of ten millions of men, women and children, if the leading civilized nations of the world had intervened when Germany and Austria sought to violate the fundamental decencies of the higher law by condemning Serbia to a living death without a hearing. We all sinned against the light and we are now all paying the penalty.

This war has written in letters of blood the great truth of the necessary solidarity of civilization and the collective responsibility of all nations for the peace of the world. The fact that the war has not been localized, as the neutral nations of 1914 vainly hoped, but has become a world-wide conflagration of immeasurable proportions, must bring home to all nations the great truth of the higher law, that they cannot selfishly and complacently stand aside when the world is in flames, with the sneering remark of Cain, "Am I my brother's keeper?"

And this leads me to the final thought of the necessary influence of the higher law upon the terms of peace. When the great reckoning comes, if its demands are forgotten in the exclusive consideration of purely ethnological and economic questions, then this war, no matter what the result, will have been fought to some extent in vain.

The chief of these demands is retributive justice, and unless that ideal be constantly borne in mind to the very end, the cause of justice will be compromised. Of this there is at present manifest danger. The war-weariness, which brought the Seven Years' War of the eighteenth century, in 1763, to a premature conclusion, has already manifested itself among the Allied nations of

1918, to the extent of vain attempts to adjust this irrepressible conflict between justice and injustice by the counsels of accommodation and considerations of expediency. In this respect, I would rather trust the instinct of the masses than the reasoned sagacity of statesmen. Even a schoolboy, with his simple vision, clearly recognizes that when a bully breaks the peace of the school yard, there is but one remedy and that is to thrash the bully so thoroughly that his physical arrogance will be broken.

In the present discussions of the peace problem by the leading representatives of the Allied nations, the note of retributive justice is no longer sounded as insistently as in the earlier days of the war, when men were inspired by a passionate longing for justice. By many punitive justice has been expressly disclaimed. "Peace without annexations and indemnities" became the new cry of Russia at the very crisis of her fortunes, and with that sacrifice of the great deal of justice her mighty armies melted as the snow in spring. Even that sturdy commoner, Lloyd George, recently stated that when the Allies prevailed there would be no "tearing up" and no "vengeance." This apparently means the *status quo ante*. This is not the spirit with which the Allied nations entered into this holy crusade.

There came to men in the early autumn of 1914 a heavenly vision as fair as that which came to the shepherds on the hills of Bethlehem. That earlier vision spoke of "peace on earth to men of good will." The later vision proclaimed the same message with the added requirement of justice, without which no peace can either be just or durable. The divine mandate of 1914 was "justice *through reparation* to men of goodwill and justice by *punishment* to men of ill will."

Obedient to that heavenly vision, millions of men in the first flush and glory of their early manhood went to war, not for any selfish purpose either for themselves or their country, not merely to rearrange the map upon some real or imaginary principle of self-determination or racial peculiarities, but to vindicate the cause of reason and justice in civilization by punishing the outlaws who had ruthlessly broken the peace of the world. From the Channel to the Vosges Mountains lie buried these brave crusaders for the right and their only solace and consolation in the hour of their martyrdom was their belief that they would not die

in vain and that the cause of justice would receive in good time the fullest vindication. France alone has sacrificed a million of her youth who now lie "somewhere in France," once a fair garden, now a Golgotha. We cannot grasp the dimensions of this sacrifice. If these men were to march past this meeting hall four abreast, continuously day and night, it would take ten days and ten nights before the last victim had passed.

It is to be noted that France, upon whose sacred soil the battle has been chiefly fought, has not echoed the suggestion of accommodation and conciliation of some of her allies. She remains silent, for in her the unquenchable desire for retributive justice still burns in her very soul. When the peace conference shall come to pass the voice of no nation will have a better right to be heard.

This silent determination to exact retributive justice as the main object of the war, also characterizes the man in the trenches, without regard to nationality. The American soldier who gazes across No Man's Land and wonders whether the next shell will find in him its target, is not greatly concerned with juristic questions as to the freedom of the seas or political questions as the right of self-determination. To him the simple object of the war is to defeat and dethrone the Kaiser. This does not arise from his abhorrence of a single man, for if he believed that the one object of the war was to destroy the Prussian *poseur* he would doubtless feel that the task was as disproportionate to the result as if the mountains of the Bernese Alps, had they intelligence and volition, were combined to crush a crawling ant in the valley. To these soldiers who are offering the supreme sacrifice of their lives, the object which makes the sacrifice tolerable is the deep conviction, that the Kaiser is the representative of a ruthless and unscrupulous dynasty and that that dynasty is as much an anachronism in the twentieth century, as would be a revival of the Sargon dynasty. He believes that the Hohenzollern dynasty and Prussian militarism stand convicted of crimes that cry to heaven for vengeance and he is willing to die, if necessary, to bring about this result.

When these soldiers return from the trenches they will look askance at any adjustment which falls short of this great ideal. They will not be satisfied with changes in the map, or a new codi-

fiction of international law. To them the war will be fought in vain if it does not end in adequate retribution. Any government which ignores their wishes and demands will be guilty of a supreme folly, for if this war, pre-eminently a war of peoples, should end in a lame and impotent conclusion, the governments which are responsible are likely to hear from their returned armies in no uncertain tones.

The heavenly vision of punitive justice seems to be fading from the eyes of some of our statesmen, even as the vision of the first Christmas night faded from the eyes of the shepherds. At the beginning of the war all the Allied nations were agreed that the Hohenzollern dynasty must be destroyed. That note is no longer sounded insistently, but instead we are told that the Allies will not influence the German people in determining the character of their government. The Imperial Government can make a shambles of the earth and a graveyard of the bottom of the sea, but we must not destroy it. No longer do we hear, at least with the same insistence, that the men who have violated international law, outraged the fundamental principles of civilization and reduced the morals of the twentieth century in the usages of war to those of the cave dweller, shall be tried and punished.

There has been in all recent peace discussions a notable *crescendo* in the note of expediency and a marked *diminuendo* in the note of retributive justice. While I firmly believe that no man who sets the world on fire, as the German Kaiser has done, should be allowed to go "unwhipped of justice," and retain his throne, yet this feature does not greatly trouble me, for I am persuaded that when the Allies shall win this war, the German people will relieve the Allies of the duty of destroying the Hohenzollern dynasty, root and branch. Even if they did not, the millions of soldiers who have offered their lives as a supreme sacrifice, not merely to readjust boundaries, but to punish wrong, will see to it that their statesmen shall not permit this robber dynasty to curse mankind any longer.

The demands of retributive justice, however, go much farther than the mere destruction of a reigning dynasty. There can be but one punishment that will fit the crime, and that is the destruction of the Prussian Empire. To permit that predatory govern-

ment to continue would be to imperil the peace of the world afresh, for who can predict what alliances that Empire, by its iniquitous methods of intrigue, bribery and bullying, may not bring about in future years. "Now is the accepted time, this the day of salvation."

To destroy the Prussian Empire would be a *denouement* to the world tragedy which would satisfy the full demands of justice. It would be an expiation worthy of *Æschylus* or *Shakespeare*. "*Discite justiciam, moniti non temnere divos.*" When the war ends, the peace conference must be something more than a congress of nations. It must be a grand assize, in which the supreme concern shall be punitive justice.

The judges of that grand assize can with profit follow the experience of our courts of criminal justice. When a burglar attempts to rob a house, the officer of the law does not in the death grapple discuss the ethics of property rights, nor does the judge simply hand him his kit of burglar tools and permit him to go "unwhipped of justice." The law first arrests him; it then destroys his kit of burglar tools, and restores to the owner the property that the burglar has stolen. It then compels the thief to repair any damage that he has wrought.

Does it stop there? Prevention and restitution are not equivalent to retribution. For the safety of society and as an impressive example, the law convicts the burglar of the crime and then punishes him.

The analogy is a true one. We are now in the act of preventing the greatest burglar of modern history from his wanton attack upon the rights of others. We must destroy his kit of burglar tools, the Prussian military machine, and then compel him to make restitution of his stolen property, and, for my part, I would have the process begin from the beginning. Prussia should cede back Silesia to Austria, Prussian Poland to the new Polish nation to be reborn of this travail, Schleswig-Holstein to Denmark, Alsace-Lorraine to France and the stolen Russian provinces to Russia. To return these without pecuniary reparation would be a lame and impotent conclusion and, therefore, money indemnities must be exacted that will, so far as material considerations can, restore the ravaged territories to their original condition.

Restitution, however, is not retribution. The only retributive punishment that is adequate to the crime is the destruction of the Prussian Empire. Please mark my words. I said "the Prussian Empire," not the German nation. The two are not convertible. While we once overestimated the distinction, we now gravely underestimate it. The German is an ancient people, while the Prussian Empire is a "*parvenu*" among nations, which began its career in the crime of 1871 and which should end it in its crime of 1914.

You may ask how can this be accomplished? To this I reply that it will be either easy or altogether impossible. If the Prussian Empire prevails in this war, the whole discussion becomes academic; but if the Allies prevail it will not be an inconclusive victory. Unless the Allies are misled by a sickly sentimentalism and a false pacifism they will not "negotiate" with the Prussian Empire, in the sense of a parley, but will dictate terms of peace which need only be limited by their own sense of wisdom, justice and magnanimity.

Apart from this power to dictate terms, two considerations will make the dismemberment of the Prussian Empire an easier task than many of our statesmen seem to imagine. The first is that industrial Germany would perish without the raw materials which only the countries of the Allies can supply.

A peaceful economic alliance against Germany, as long as the Prussian Empire continues as a political entity, with the promise of preferential terms to the German states other than Prussia, if they will form a separate government, would probably cause the swift disintegration of that empire after its defeat on the field of battle. It should not be forgotten that the Imperial Government is the creation of yesterday, and that it is almost as ramshackle an empire as that of Austria. It was welded together by Bismarck, by the sword and by material success. When that sword is broken and that material success vanishes, the empire will crack at its very foundations. This is true, because there are fundamental political, social and ethnological differences between Prussia, a mixed nation, and the rest of the German states, who are comparatively pure Teutons. The incompatibility is not a thing of today or yesterday, but of ages past. It was not mere accident that the states of the empire never united until Bismarck forged the chains

in the hectic days of 1871. We should remember that a half a century ago Bavaria, Württemberg, Saxony, Darmstadt, Hesse and Hanover all fought with Austria against Prussia.

A nation is more than a political state. It is an historic entity. Prussia has contributed little or nothing to the German people, except its military martinets and subservient statesmen. Lessing, Fichte and Wagner were Saxons, Holbein and Dürer were Bavarians, Goethe was from Frankfort, Weiland, Schiller and Hegel were Swabians, Beethoven was a Rhinelander of Belgian ancestry, Bach a Thuringian. The best of Germany is non-Prussian. As late as 1893, Prince Bismarck said "There are many who are glad to be citizens of the German Empire who will not be Prussians," and as late as 1914 his successor, Von Bethmann Hollweg, said that the Bavarian, Swabian and the Badener "regard men and matters with other eyes than the Prussian and the North German." Again he said, on the eve of the present war:

"The hostility against Prussia has steadily increased since the memories of the national struggles and of what the empire owes to Prussia have been pressed into the background by the material interest of the present."

When the obscure causes of this war are fully revealed, it may be found that the Prussian dynasty precipitated it for one reason, among many, that the rising democracy of Germany, as expressed in the ever-increasing and predominating socialistic vote and the steady widening of the breach between Prussia and the other German states, made the future of the empire uncertain, unless it could again rivet the chains of the empire by a victorious war, as they were forged in 1871.

This condition of internal disunion, which preceded the war, will be infinitely increased when the bitter chalice of defeat is commended to their lips, and they fully realize that this calamity, which has lost them the respect and goodwill of the world, was caused by a wholly unnecessary and unjust war brought by their Imperial Government upon the falsest of false premises.

Here is opportunity for constructive statesmanship. In my judgment, the victorious Allies, not merely as an act of retributive justice, but as a measure of common safety, should, on the conclusion of the war and as a part of the peace conference, invite the German states other than Prussia, to form their own government

in their own way, and should promise such new government of the better Germany such preferential terms in the treaty of peace, as would constitute a powerful incentive to the other German states to emancipate themselves from the destructive dominance of Prussia. The Allies could guarantee their existence as a separate state against the future aggressions of Prussia and could promise a restored standing in the fellowship of nations, with full commercial equality. This would make Prussia a petty principality, such as it originally was in the days of the Elector of Brandenburg. Its great industry, war, would end. Its poverty without Germany would reduce it to impotence. It deserves this fate, for it satisfies the craving for retributive justice, which the wisest statesman must take into account. This is a war of peoples and their will must prevail. What their swords win, the expedients of statesmen must not lose to mankind. The men in the trenches are not greatly concerned about mere changes of the map, or juristic formulæ, although these are also necessary incidents of the peace problem. They are concerned that the cause of punitive justice shall not be compromised. This is the great object for which the soldiers of the Allies are now fighting and men have never fought and died for a greater cause. It goes down to the very foundations of human society and is as wide and comprehensive as humanity itself.

We must check the present tendency, born of war weariness, to eliminate justice as a vital factor and to treat the problems of peace as mere questions of political power and economic value. The folly of statesmen in all ages has been to regard justice as a mere abstraction of impracticable idealists. They and we must realize that it is the dominating factor in human progress and that its ultimate vindication is as certain as the existence of God and as infallible as His judgments. To sacrifice uncounted billions of treasure and uncounted millions of lives for a lame and impotent conclusion, such as a peace by compromise and shifty accommodation, would mark the high tide of human folly. It would be to crucify the cause of justice afresh and to put it to an open shame.

All other considerations must be subordinated to the primal requisite of retributive justice. Only thus will the nations "rise to the height of the great argument and vindicate eternal Providence and justify the ways of God to man."

VI.

CONTRIBUTIONS OF COMPARATIVE LAW BUREAU.

THE MEXICAN REVOLUTION IN WORD AND DEED.

BY

JOSEPH WHELESS.

Of Comparative Law with relation to Mexico it is not so much my purpose to speak at this time, as of some of the socio-legal and political sequences of the revolution and of the new revolutionary constitution in Mexico. Free and liberty loving peoples must always watch with interest and sympathy the struggles of other peoples for liberty and the reign of law. Both then as citizens of a free country whose ideals of liberty and democracy are today more than ever the thrilling hope of the world, and as lawyers interested in the public institutions of other countries, may we find interest in casting an appreciative glance over recent remarkable events which mark a new and hopeful epoch in the life of our nearest southern neighbor nation, Mexico.

Our intellectual and spiritual vision will be improved by getting the right perspective through a brief retrospect of comparative fact; for the ideals and achievements of the revolution cannot be properly appreciated without some comparisons and some understanding of the conditions which made it imperative and righteous; it would be idle merely to relate what has been done in Mexico as expressed in form of laws, without knowing why it had to be done and what changes have been wrought thereby.

For a thousand years Anglo-Saxon peoples have enjoyed the heritage of liberty and an ever growing measure of self-government; have been schooled by constant practice in the claim and exercise of political rights, and a very fair share of civil and political liberty have they achieved—making all the more shameful and ignominious the gross abuses and corruptions, in legislatures, on the bench, and at the polls of which our own history has not been without blushing examples. For 200 years the

English colonies in America governed themselves, elected their own magistrates and representatives, and made their own laws; and they came into the union as states quite prepared for full self-government. But Spain, since the discovery of America, never knew liberty nor its people self-government; and its American colonies, including Mexico, for 300 years were miserably and autocratically misgoverned, oppressed, and ignorant of even the name of franchise and self-government. Here, as frequently, instead of my own words, I shall let two of those most competent to speak of their own country—both first among Mexican patriots, and one a haloed martyr in the cause of Mexican regeneration and liberty—speak what I wish to convey to you of the origins and causes of Mexico's tragic history and her heroic struggles for emancipation, liberty and justice. Says the late President Madero, in his book "*La Sucesión Presidencial en 1910*," my copy of which bears his autograph which he genially wrote for me:

"Three centuries of oppression, during which all the rights which could serve as a bulwark to man against tyranny were proscribed from Mexican soil, had made it to be considered a crime to be a Mexican, a crime punished by the conqueror with cruelty mixed with avarice, for the natives were reduced to slavery and made to work without rest in the cultivation of their lands and in the exploitation of their mines, that their masters might fill their coffers with gold. . . . The result of the odious tyranny of the viceroys was that the natives of the country lived in extreme ignorance, and their intellectual level was so low that they could not understand even the simplest ceremonies of the Catholic cult, although it was the only thing taught them, and they mixed its practices with those inherited from their forebears, producing thus a strange medley more like to idolatry than to any other worship.—(Mr. Bryce says the same thing in his recent book "*South America*.")—With respect to all the rest, three centuries of slavery, during which many generations one after another passed under the same yoke, made our indigenous class lose all notion of their rights, of the dignity with which they were invested as men, and with the most abject resignation they dragged the heavy chain which deprived them of their liberty."

The other spokesman of the wrongs and champion of the rights of the oppressed millions of Mexico is President Venustiano Carranza, who in his scholarly and statesmanlike address to the recent constitutional convention, at the opening of its ses-

sions on December 1, 1916, summed up thus the philosophy of the Mexican situation:

"De Tocqueville observed in his study of the peoples of America of Spanish origin, that they run to anarchy when they tire of obeying, and to dictatorship when they tire of destroying; and he considered that this oscillation between order and unbridled passion is the fatal law which has ruled and will for a long time rule those peoples. The Latin-American peoples, while they were dependencies of Spain, were ruled by an iron hand; there was no will but that of the viceroy; there existed no rights for the vassal; for those who spoke of liberty—undermining the foundations of faith or of authority—there was no avenue of escape but the gallows. When the struggles for independence broke the bonds which bound these peoples to the mother country, they, dazzled by the grandure of the French Revolution, took for themselves all its acquisitions of liberty, without the thought that they were not prepared for it, and that they had no men able to guide them in so great a task. The habits of self-government are not acquired overnight; to be free, it is not enough to wish it, but it is also necessary to know how to be free. These peoples have needed and yet need strong governments, capable of restraining within order the undisciplined populations, disposed at every instant and on the most futile pretexes to break out of bounds and commit every kind of excesses; but, unfortunately, the mistaken idea has been that by strong government is meant despotic government; a fatal error which has fomented the ambitions of the superior classes to seize for themselves the direction of public affairs. The belief has always prevailed that order cannot be preserved without trampling upon the laws; and this alone is the cause of the fatal law of which De Tocqueville spoke: for dictatorship will never produce order, as darkness cannot produce light. Dissipate error; teach the people that it is not possible for them to enjoy their liberties if they do not know how to make use of them, or, what is the same thing, that liberty is conditioned upon order, without which it is impossible. Construct the government of the Latin-American peoples upon this basis, and the problem will be solved."

These are the real conditions of the people which demanded, and the true ideals which inspired the Madero revolution of 1910, continued and carried through to very substantial reanization by his avenger and successor Carranza, as it is my purpose here to show by concrete accomplishments.

A word yet as to the conditions immediately behind the revolution. So late as the census of 1910, of the total population of

Mexico of 15,000,000, 75.3% of its inhabitants, over 11 years of age, could not read or write; a much larger percentage neither cared nor dared to vote, nor would it have counted if they did or had. Between 1821, when Mexico became independent of Spain, and 1877, when Porfirio Díaz, at the head of the revolution of Noria, began his 33-year dictatorship, Mexico knew neither peace nor order, but incessant civil strife and anarchy, well shown by the fact that in those 56 years some 68 so-called presidents, provisional presidents, acting presidents, dictators, and military bushwhackers, with two emperors and two foreign interventions, wrought the ruin of the country through their bloody lust for power and pelf. In 1911, being in Mexico City, at the inauguration of President Madero, I heard Provisional President De la Barra pronounce these words in his address to Madero turning over to him the reins of power: "Mr. President, you have the distinction of being the first man in the history of Mexico who has ever succeeded constitutionally to this high office"—and Madero himself rode into power at the head of a revolution—a just and righteous revolution, the appealing slogan of which was "Effective Suffrage—No Reelection." It is one of the ironies of history, and a striking example of the duplicity or the weakness of the ambitious seeker after power, that these identical words were the declared program of Díaz upon which he launched his revolution of Noria, in 1871; successful in which, he abolished elections in all but the farce of the name, and imposed himself for eight presidential terms and quite 33 years upon his subjected country, to which he gave indeed peace, but the supine, mailed-fist peace of the "Military Díaz-potism" of his system, which retained in ignorance and reduced to slavery a whole nation, in the selfish interests of the aggrandizement, wealth and perpetuated power of his little oligarchy of "Científicos" who ruled and exploited the land and the people for a whole human generation. These, and others to be noticed in their place, were the conditions of wrong and oppression in Mexico to right which the "Apostle of Liberty," Francisco Madero, raised his standard of popular revolt, November 20, 1910, "for the purpose," as he says in his book and demonstrated by his course, "of attaining the reestablishment of peace within the law; of the peace, somewhat turbulent if you please, but full of life, of free peoples, and

not the sepulchral peace of oppressed peoples, among whom no event has the privilege of perturbing their impassible tranquillity." As instance that the slavery imposed upon this people was very real, despite the positive prohibitions of the Constitution of 1857, as well as very ruthless, I have myself seen, in Mexico, trainloads of hapless Indians from the north, torn from their humble mountain homes and carried, under heavy guards of soldiers, away to the torrid haciendas of Yucatán to labor to speedy death for the great landlord favorites of Díaz, but nine of whom owned nearly the entire lands of that state.

Madero's revolution for the people won, despite the vaunted power of the dictator, betrayed by the grafting greed of his own pampered creatures of favoritism; for his army existed on the payrolls and not in the ranks; and the chief of his secret service, my friend of long standing, told me how he had discovered in the arsenals, and how the "Old Man" had broken down and wept on being shown, that the great stores of rifle and machine-gun ammunition were blank cartridges with wooden ball. A little incident will illustrate the temperament of the Mexican proletariat, fed up on all too glowing prospects, and fired with the belief of the promised millennium now at hand, when, as dreamed by the southern freedman of our Civil War, every man of them was to be the happy possessor of his "forty acres and a mule." For Madero had fought and won his revolution on an agrarian program of the subdivision of the great landed estates and the return to the masses of their patrimony whereof they had been for many years despoiled by Church and State and grasping monopolists of political favoritism. And indeed, in good faith Madero sought to redeem his pledges, buying up and taking in donation large tracts of lands, which he was planning to transform into homesteads for the land-hungry people; but his processes were too slow for the expectations of the masses of his too eager followers. To relate, hardly ten days after the inauguration of Madero of which I have spoken, on November 6, 1911, I was sitting one evening on an iron bench in the Great Plaza opposite the national palace, listening to the military band discourse its beautiful music. Behind me I heard feminine voices, and I could but overhear the burden of their complaint, to this effect: "We are disillusioned; for two years the soil of

the fatherland has been watered with the blood of its hero sons, and all in vain; we were promised that as soon as the revolution won we would come into our own; but Don Pancho (President Madero) is now president, he sits in his palace, and he has not kept his promises to us; we are betrayed; something must be done or all our sufferings are for nought." Looking around, I saw three barefooted Indian women, sitting with baskets of food waiting to take them to their men when they came out from military guard at the palace. It was this general feeling of disappointment and deception—of hope deferred making sick the hearts of the ignorant and too credulous people, which cunningly fomented by ambitious intriguants for power, led on to the treachery of Huerta—the traitorous conspiracy of that faithless general and his seizure of the government, followed by the assassination of President Madero and his vice-president—the blackest stain on the bloody pages of Mexican history. But the deepest dark goes just before the dawn; and this infamy was quickly followed by the lightning-flash of patriotic heroism which became the beacon of the final and real redemption of Mexico and the Mexican people.

On the day after Huerta's perfidy, February 19, 1913, he wired this laconic and cynical message to the governor of every Mexican state, including Venustiano Carranza, Governor of Coahuila: "Authorized by the Senate, I have assumed the executive power, the president and his cabinet being prisoners." Quickly, on the same day, Governor Carranza referred this odious telegram to the Congress of his state, "to resolve upon the attitude which the government of the state should assume in the present crisis towards the general who, through error or disloyalty, pretends to usurp the first magistracy of the republic, hoping that the resolution of the Honorable Congress will be in accord with legal principles and with the interests of our country." The Congress, on the same day, promptly expressed its entire accord with the governor, and enacted a decree repudiating the usurpation of Huerta and all his acts; conferred extraordinary powers on the governor of the state in all branches of the public administration, to the end that he should "proceed to arm forces to cooperate in sustaining the constitutional order in the country"; and called upon the governments of the other

states and military forces of the country to second the action of the state of Coahuila. A small band of patriots responded to this call, and on March 27, 1913, signed and proclaimed the "Plan of Guadalupe," being the revolutionary program, which, with its several later amplifications, conferred plenary powers upon Governor Carranza as "First Chief of the Constitutionalist army, entrusted with the executive power of the United Mexican States," and pledged the return to constitutional government as soon as its arms triumphed; the "Plan de Guadalupe" being made "the fundamental law of the Constitutionalist army," in other words, the constitution of the revolution. With this summary of the crying causes of the revolution of 1910-1913 in Mexico, and of its program and pledges to the people, I will briefly review the manner of performance and measure of reform which have faithfully followed upon its gradual and finally full success.

Agrarian reform and social reconstruction were frankly foremost in the program of the revolution. Among the first great accomplishments of the first chief when he had rescued material portions of the territory of the republic, was his agrarian decree of January 9, 1915. This decree recited, that "one of the most general causes of the ill-being and discontent of the agricultural population of this country has been the spoliation of the communal lands which had been granted to them by the colonial government as a means of assuring the existence of the indigenous class, and which, under the pretext of complying with the laws which ordered the subdivision of those lands and their distribution as private holdings among the inhabitants of the towns to which they belonged, came into the hands of a small number of land speculators"; and the decree declared the nullity of all the lawless acts of spoliation by which this result had been accomplished under former evil governments, and provided the manner of making restitution to the rural communities which had been wrongfully deprived of it. The extent of the evil sought to be remedied, and the need for heroic remedy, are shown by these official data, taken from an Executive Document of July 1, 1916:

"In the last census of the republic (1910), it appears that three-fourths of its total population are inhabitants of the rural fields, who live exclusively by the labor of some three million

individuals who cultivate the land; and it also appears that this land belongs almost in its totality to less than one thousand land-holders; for the 400,000 agriculturists classified in said census possess only small tracts, or hold under leases or farm on shares on a small scale. The attention which the agrarian problem demands in our country is therefore very evident, as the countrymen constitute the most important portion of the Mexican people, and the betterment of their condition is absolutely necessary in order to realize the high ends of justice required by the Constitutional revolution."

The system of communal lands of the indigenous populations may be compared to that of the tribal lands held in community under treaties or acts of Congress by the American Indians, the alienation of which to private land-grabbers was forbidden by law. The justification of the agrarian decree upon the facts behind it, and the yet partial results of the policy pursued in its execution, appear in President Carranza's address to Congress, September 1, 1917:

"The policy pursued in the agrarian question has been limited so far to the reclaiming of national lands which the present government has found to be cornered and monopolized by a small number of favorites, and to the donation of lands to groups of tillers of the soil who form the rural towns. As the economic and political conditions of the country have not yet permitted the solution of the agrarian problem in its full extent, the government has only followed the above policy; and up to this time the nation has recovered a total of 13,280,000 hectares (33,100,000 acres), from only *nine* land-grabbers who had cornered it; this enormous extent of land is now to be acquired by thousands of citizens. The grounds, which the executive has had for declaring the nullity or forfeiture of the contracts under which this land was held, have been entirely legal; for it has been based upon the failure of the concessionaires to comply with their contracts, and upon the failure of previous governments to observe the provisions of the laws. All these contracts were granted under the Colonization Law of December 15, 1885, which clearly and positively provides that the lands in question should be used only for colonization, the concessionaires being obligated to sell them in lots not to exceed 2500 hectares, under the penalty of losing their rights if they violated this obligation. The government never was authorized by law to exempt these land-grabbing companies from the obligation to colonize these national lands; hence the arrangements made by these companies with previous governments to exempt them from this obligation in

return for the payment of an insignificant fine, are of no value; and therefore said lands cannot remain in the hands of said companies when it is declared that they have not complied with their contracts."

The recovery of each of these nine vast tracts of public lands illegally grabbed and held by small incorporated cliques, the records of which proceedings are before me, was founded upon the clearest demonstration of illegality and violation of law and contract; there has been no wholesale confiscation of private property for free distribution among the populace, as in the French Revolution and in the recent Russian Red D  b  cle; it has followed an orderly and legal process before constituted authorities. The restitution or donation of recovered lands to the communities has followed the same orderly and legal process, based in each instance upon exact proofs of right, demonstrated by the fact, that up to the time of the president's address to Congress, September 1, 1917, of 1393 petitions received by the authorities, only 21 had been definitely approved by the National Agrarian Commission, resulting in the granting to the towns of only 19,128 hectares of land by way of donation and only 76 hectares by way of restitution.

The government earnestly seeks, again says President Carranza, to further all measures tending to the prompt and efficacious development of the economic activities which will constitute the foundation upon which the future must be made secure; and in orders to all the governors they are instructed to adopt means for the cultivation of all available lands and of the estates sequestered by the revolution, and to give all possible aid and encouragement to private owners to continue cultivation. Again he directs the governors, in order to prevent the scarcity of food because many proprietors abstain from cultivating their lands, to urge all owners to resume cultivation, and in case they refuse, to convoke the neighbors and have them do so, under the obligation to give the owners the usual cropping shares. Even while his government was fugitive, the struggling official publication daily published careful special articles on every manner of agricultural product and improved processes, and incited the people to intelligent interest and increased activity. Early in 1915 he amended the Constitution

of 1857, so as to authorize federal legislation on the subject of labor throughout the country, reciting in his decree that that constitution established as among the rights of man the freedom of labor and its just recompense; but that these guaranties, indispensable to the adequate development of the laborer and to the correlative national progress, have remained a dead letter in view of the unhappy reality of the slavery of labor from father to son, and the exploitation of the laborer under the industrial system consisting of "obtaining from a human being the greatest amount of work for the lowest price, and not for a just compensation," and he decries the "natural wastage which the individual and the species suffer from the inhuman wage which does not permit the necessary and constant renewal of strength, and the want of protection to the women and children who are obliged to work to live." This was followed by the decree reciting that under the "just compensation" guaranty of the constitution, "that wage cannot be considered just, as to laborers who live by their daily labor, which is not sufficient to cover the average cost of living, inasmuch as the first right of every man is to live; and as the cost of all articles of prime necessity has increased the average cost of living of industrial and factory laborers, so that they cannot with the wages they receive obtain a sufficient quantity of the necessities of life to restore their own strength and care for their families," increases of 35% in day wages and of 40% of piece-work pay are decreed. Other succeeding decrees fixed a minimum day wage for all day laborers, including domestic help, of 75 cents, with an increase of 25% of the food allowance they received; all wages were ordered paid in gold or its equivalent in coin. Again, reciting that "it is of notorious utility and urgent necessity to procure the cessation of the evils which the people suffer, their redemption being the capital purpose of this government," the system of company and plantation stores where the workmen and peons were obliged to buy everything from their employers at usurious prices, was abolished, and a countrywide system of private or public stores under government supervision was established. The effective innovation was adopted, in the granting of all government concessions and contracts, to incorporate a clause, binding the concessionaire: Not to employ

the labor of children under 14 years of age; to provide for the families of the workmen and peons employed by him living quarters in good hygienic condition and at a moderate rental; to provide at his own expense medical attendance and food for those injured in the work; to indemnify his workman and employes injured by accidents of labor, and their families in case of their death, according to a fixed scale. In these and many other ways the government exercises a paternal solicitude for the welfare of the long-oppressed masses of the people, and in good faith and sincerity of purpose seeks to carry out the cardinal principles of the popular revolution.

Not only in material matters is the social well-being sought, but the reforms go to the most inveterate habits and customs of the people for their improvement. I shall let several decrees speak the attitude of the government on the subjects indicated:

"Whereas, One of the purposes sought by the revolution is to attain the highest degree of morality in all branches of the public administration, and as the institution called the National Lottery, sustained by previous governments, can be considered but as an enterprise of gambling, sustained, promoted and exploited in behalf of the public treasury, but with grave detriment to morals and the public interests,"—

therefore it is abolished, by Decree of January 13, 1915, and the main establishment in Mexico City and all its agencies throughout the republic are ordered liquidated within two months.

As the use of opium "seriously injures the interests of society," the importation of the drug is prohibited, by Decree of January 1, 1916.

"Whereas, The primordial duty of every government is to assure to all its inhabitants the enjoyment of the fundamental rights without which society cannot exist or duly fulfill its purposes, and it has, consequently, the obligation to promote such usages and customs as tend to the realization of that object; . . . and, the duty to procure the civilization of the popular masses by awakening altruistic sentiments and elevating thereby their moral level, is being sought to be accomplished in Mexico with especial zeal through educative establishments, in which not only instruction is given, but also physical, moral and esthetic education, in order to prepare the individual for all his social functions. . . . That among the inveterate habits which produce stagnation in the countries where it is deeply rooted, is the sport

of bull-fighting, which not only exposes, without the slightest necessity, the life of a man, but also, and equally without object, causes tortures to living animals, which morality includes within its sphere, and to which the protection of the law must be extended. Moreover, the sport of bull-fighting provokes sanguinary sentiments, which unfortunately have been the bane and reproach of our race throughout history, and are the incentive for evil passions, and are the cause which aggravates the misery of the poor families, who, in order to procure the unwholesome pleasure of an hour, deprive themselves of the necessities of life for several days,"—

therefore, bull-fights are prohibited absolutely throughout the republic.

With the greatest zeal the First Chief and after him the Constitutional Government have sought to establish an efficient system of public education throughout Mexico. In December, 1914, a commission of leading educators of the country was sent to reside in Boston, to make a thorough study of educational methods and courses of study for normal and primary schools, kindergardens, and schools of domestic science; and in January, 1916, two decrees were issued establishing a system of national schools. A later decree recites, that "in all countries in which democratic institutions are established, the defense of these, of the national sovereignty, and of the integrity of its territory, must be made by the citizens," therefore, in all the establishments of primary, superior, and preparatory education in the republic, military education for males and training as nurses for females, are made obligatory. A very comprehensive organic law of public education was enacted by the first Congress under the new constitution, within a fortnight after its organization: this law prescribes compulsory education between the ages of 6 to 16 years.

"To justice, the historic longing of the Mexican people, and the constant concern of the Constitutionalist revolution," says President Carranza to Congress, September 1, 1917, "has the government continuously devoted that especial attention which is required by the pressing need of the nation." The number of decrees and orders on this subject is large, attesting both the need for radical reform and the zeal in seeking its thorough accomplishment. As this is a vital subject, and of special interest to American lawyers, both as respects the past and the future of Mexico, the judicial situation will be portrayed in

official language. First military and then provisional civil courts of criminal jurisdiction were established, as the progress of the revolution made possible; the local governors and political authorities were warned to refrain from intervening in judicial matters, civil or criminal; for, says an order, "from this time there shall be complete independence of the judicial officers with respect to the executive power in all the states of the republic." Again it is recited, that "the administration of justice has suffered from many corruptions and vices during previous governments, the principal of which were the seeking to influence justice by gifts and causing pressure to be made by friends and influential persons; that with the firm purpose of correcting all these evils, so that justice shall be a legitimate patrimony of all the people, the judges and all persons connected with the administration of justice are reminded that its administration is gratuitous, and that they are strictly forbidden by law to accept remuneration or gifts in any form whatever, and are forbidden to hear or make recommendations in any matters connected with their official duties." In his address to the first Congress, April 15, 1917, the yet First Chief, in a sentence, laid bare what has been another of the serious vices of the whole system of justice in Mexico: "The administration of justice has had an absolute want of independence, having been subordinated absolutely to the executive power"; and he proceeds in language which sounds very familiar to American lawyers and to the members of this Association: "Moreover, it has been characterized by its cumbrous structure, making it complicated and costly, and by the slowness of its proceedings, devised rather to tire litigants than to settle their controversies. The new constitution establishes principles which will serve for the extirpation of these vices; and the country expects of the Congress laws which will free justice from the shackles and labyrinths of the rutinary procedure which has made shipwreck of justice." Here it may be noted that a commission composed of members of the Judiciary Committees of the Congress, and of the Supreme Court of the Nation, has already studied and reported to Congress a complete revision of the Codes of Civil and Criminal Procedure—"such revision being indispensable for realizing the revolutionary ideal of efficient and expeditious justice," says the president.

And later, this "revolutionary ideal of justice" is thus set forth, portraying at once the dismal past and the bright resurrection and hopeful future of Mexico:

"The triumph of a political idea on a purely speculative plane is useless, unless the necessary measures are at once taken to implant such idea in the customs and modes of life of a country. . . . None of the measures taken by the government for the rapid and complete reorganization of the country is so interesting as those related to the administration of justice, for there is no country in which a government may be considered as such, if it does not impart justice among the governed. In our country, where for centuries the sword of Themis has only served to defend the usurpations of the powerful, it is all the more necessary to establish upon solid and firm bases the operation of the courts of justice, pursuing always the ideal that they should serve as the safeguard of the legitimate rights of poor and rich alike."

The slogan of the Madero and Constitutionalist revolution was "Effective Suffrage—No Reelection"; and the constant aim of its leaders has been to make real these principles. At every step as the revolution progressed through its pre-constitutional phases to the new constitutional order, have popular elections, as effective and as safeguarded as conditions permitted, been held throughout the country, first for the local governments of the ayuntamientos and the Municipios Libres; then for delegates to the constitutional convention; next for the new constitutional congress and the federal executive; lastly the great law of July 1, 1918, for the election of the federal powers, the congress and president, in which universal manhood suffrage, made compulsory by law, previous registration, the direct vote by secret ballot, have been established over Mexico; and by solemn provisions of new federal and state constitutions alike, neither president nor governor is eligible for reelection to succeed himself, nor may any military officer in active service be elected to any office in the Republic. The separation of the powers of government in the several branches of administration has been accomplished, and the complete independence of the states in all their internal affairs from the central government has been made secure. The Plan of Guadalupe, under which the revived revolution was launched in 1913, vested the First

Chief with a greater panoply of plenary powers than had ever been assumed by any self-imposed dictator in Mexican history; but it also pledged him "to convoke general elections as soon as peace was made secure, and to surrender his power to the citizen who should be then elected." After all the vicissitudes of civil contest and of victory, the victorious First Chief, on September 14, 1916, issued his Call for the Constituent Congress, to meet on December 1st; and in it he said: "I have always had the deliberate and decided purpose to carry out with all honor and efficacy the revolutionary program outlined in the Plan of Guadalupe and its amendments, and to that end I have issued divers dispositions directly tending to prepare for the establishment of these institutions which should make possible and easy the government of the people by the people." The truth of this is evident from what I have culled from abundant store of proofs; and when the new constitution, revolutionary in double sense, was promulgated on February 5, 1917, true yet to his plighted word, the First Chief of the revolution rendered full account of his stewardship to the constituents, and surrendered his plenary powers of dictatorship to the Constitutional mandataries of the people who had trusted him. Like our Washington, the Mexican revolutionary leader by free and unanimous vote of the people whom he had redeemed was gratefully chosen the first president under the constitution. He entered upon this high commission, standing upon the platform which he had previously set up for all the servants of the people: it was in effect his inaugural, rather than a farewell address to the people:

"In view of the substantial triumph of the revolution, which was a protest against the former political and administrative vices of Mexico, those inspired by its ideals are under the great responsibility not to permit that the sacrifices of lives and property shall be in vain, but on the contrary, they must effect a change in the laws, in the administration, and in the social order, to be expressed in practical and effective measures that shall produce a real and positive betterment in the situation of our people; and every official within the sphere of his duties must make every possible effort to abandon vicious practices, and to be always inspired by the ideals of the public welfare, without permitting to himself the slightest departure, whether in great matters affecting the whole country and the highest moral quali-

ties, or in the small details of the administration of his office. All public officials are incited to punctuality and diligence in their official duties, to permit no manner of corruption, unfortunately so general, and to expedite the administration of justice."

Further in the pregnant matter of internal recreation I cannot now go within the limits of time and patience. In a closing word, it must not be omitted to mention that with respect to the international relations and duties of Mexico, the revolutionary government has not been less enlightened or scrupulous, as all its public acts will bear record. No sooner was the revolution under way of armed operations, than in the field, on May 10, 1913, the First Chief issued a decree, declaring "The right is recognized of all nationals and foreigners to claim payment for damages suffered by them during the revolution of 1910, as also for damages suffered by them during the present struggle, until the restoration of the constitutional order"; for the purpose of ascertaining and settling which both national and joint commissions were to be created, as was indeed done by decrees of November 24 and December 24, 1917. On the bright escutcheon of the government of the revolution, emblazoned with high principles and charged with notable performances, but one bar sinister defaces it, due to a sinister influence which has left the trail of the serpent wherever through the word it has slided along—the Hun Propaganda. This appears in Mexico's abortive "Congress of Neutral Nations" for accommodation peace—where there can be no peace, honest and honorable, but that imposed by the victorious sword in the vitals of the serpent—and by the jangling discord of these words in the address to Congress, September 1, 1917, referring to the abortion:

"The Mexican Government has seen with pain that, its efforts in favor of peace not having had the desired success, the World Conflagration has spread and has involved nations completely foreign to the interests at stake in this gigantic struggle. . . . Mexico, entirely foreign to the interests for which the European peoples are contending, will continue to observe the strictest neutrality."

For it passeth understanding that a nation, claiming enlightenment and struggling for liberty itself, can be "foreign" to the heroic struggle for world liberty, for civilization, for humanity,

and for public law—all menaced, trampled upon and outraged by the unholy but well-fit league of the Hun and the Turk—for which the civilized European peoples and all of America but Mexico are gripped till victory with the hordes of barbarism. And it truly amazes that Mexico can proclaim "respect" for the fell rapist of Belgium and bloody assassin of the *Lusitania*, itself having outlawed Villa and his pro-Hun cutthroats for the murder of a few Americans at Santa Ysabel. And "neutrality"—unless under the immediate duress of Hun vengeance—is now all but a synonym for approval and complicity. The willful neutral will be the international pariah at that soon time, in the Providence of the God of Nations, when the World Outlaw is dragged before the bar of International Retributive Justice to hear the doom of his iniquities. For no criminal, run to earth and under process for his crimes, is suffered to sit with his "peers" of the criminal jury and discuss with them the verdict which is to be the measure of his just penalty. The jury hear the evidence, retire alone to their room—while the culprit awaits behind the bars the result of their deliberations; and when they have decided his fate, the jury bring into open court their verdict of condemnation and of expiation, and it is read out to the convict for him to submit to and perform. Let there be then, when the Allied Sword has been driven to the hilt, no gaudy Congress of Diplomats around a mahogany table on one side of which sit, on terms of sovereign equality in polite palaver, the haughty Hun Ambassadors, holding in their bloodreeking hands the bleeding "Pawn" of Belgium to haggle and barter for terms, and colonies and favors withal—the crowning insult of all the Hun's insolent outrages! But in God's name and decency's, let there be a grim gathering of the victorious military chiefs of the allied armies, sword in hand, in the very lair of the "Beast of Berlin," there to draw up the stern final Decree of Restitution, Reparation and Expiation which this criminal nation and its minions must obey, under the compulsion of serried bayonets until the last farthing of the account is told. Then as a criminal who has done his penance finds no ready readmittance to the society which he has wronged, let not this international criminal reenter the honorable society of nations as the "great and good

friend" of civilized states; but for a generation or a century be it banned and shunned by civilization, ostracized from social and economic relations with an outraged world, till through bitter repentance and humiliation it recovers, maybe, the "respect" which its crimes have forfeited, of all the world but Mexico.

VII.

INDEX.

FOR VOL. IV (1918) AMERICAN BAR ASSOCIATION JOURNAL.

	PAGE
A Call to Service, address by John H. Clarke.....	567
Alberta, Legislation, Jurisprudence, Bibliography.....	130
Amendments to Constitution and By-Laws.....	298
America, Civil Liberty in, Address by Walter George Smith.....	551
Announcements	3, 79, 298, 546
Appellate Courts, Memorial for.....	15
Argentina, Legislation, Jurisprudence, Bibliography.....	133, 265
Asia, Legislation, Jurisprudence, Bibliography.....	215
Baldwin, Simeon E., Paper by.....	37
Beck, James M., Address by.....	656
Belgium, Legislation	162
Binding the Journal.....	5, 550
Bolivia, Legislation, Jurisprudence, Bibliography.....	139
Books Received by the Secretary.....	6, 81, 304, 550
Brazil, Legislation, Jurisprudence, Bibliography.....	141
British Columbia, Legislation, Jurisprudence, Bibliography.....	130
Brown, Rome G., Paper by.....	54
Bureau of Comparative Law, Report of.....	317
Contributions of	111
Call to Service, Address by John H. Clarke.....	567
Cammeo, Federico, Address by.....	645
Election to Honorary Membership.....	549
Notice Concerning	546
Canada, Legislation, Jurisprudence, Bibliography.....	123
Carson, Hampton L., Address by.....	583
Chile, Legislation, Jurisprudence, Bibliography.....	146, 266
China, Legislation, Jurisprudence, Bibliography.....	215, 251, 268
Civil Liberty in America, Address by Walter George Smith.....	551
Clarke, John H., Address by.....	567
Code, Model Insurance.....	325
Colegio de Abogados of Buenos Aires.....	4
Columbia, Bibliography	266
Committees:	
Special	12
Standing	7
Reports of	317
Commerce, Trade and Commercial Law, Committee on.....	8
Report of	319

700 *The American Bar Association Journal*

	PAGE
Comparative Law Bureau, Contributions of	111
Asia, Legislation, Jurisprudence, Bibliography	215
Canada, Legislation, Jurisprudence, Bibliography	123
Editorial Miscellany	118
Editorial Staff	274
Egypt, Bibliography	266
Europe, Legislation, Jurisprudence, Bibliography	162
Foreign Codes and Laws Translated into English	276
Foreign Legislation, Jurisprudence, Bibliography	123
Asia:	
China	215, 268
China, Commercial Law in	251
Japan	258, 269
Canada (Dominion)	123
Canada:	
Alberta	130
British Columbia	130
Manitoba	129
New Brunswick	128
Nova Scotia	128
Ontario	127
Prince Edward Island	128
Quebec	127
Saskatchewan	129
Yukon Territory	132
Europe:	
Belgium	162, 265
France	267
Germany	171, 267
Great Britain	172
Holland	177, 268
Russia	179, 270
Latin America:	
Argentina	133, 265
Bolivia	139
Brazil	141
Chile	146, 266
Colombia	266
Costa Rica	146, 266
Cuba	147, 266
Ecuador	266
Honduras	147, 268
Nicaragua	148, 269
Panama	151, 270
Peru	153

Comparative Law Bureau, Contributions of—Continued.	
Foreign Legislation, Jurisprudence, Bibliography—Continued.	
Latin America:—Continued.	PAGE
Salvador	155, 270
Santo Domingo	157
Uruguay	160, 270
Venezuela	162, 271
Philippines	261
Scandinavia:	
Denmark	193, 266
Finland	203
Norway	195, 269
Sweden	196, 270
Spain	207, 270
Switzerland	210, 270
General Bibliography	265
France	267
Greece	268
Hungary	268
Iceland	268
Italy	269
Mexico	269
Morocco	269
Portugal	270
Portuguese Colonies	270
Headquarters	274
International High Commission, Work of	120
International Private Law and Jurisprudence	111
Journal Exchange List (Foreign)	275
Las Siete Partidas	261
Mexican Revolution in Word and Deed	681
Notes on International Private Law and Jurisprudence	111
Obituary (Carl Goos)	119
Officers and Managers of	274
Organization and Work of	273
Publications of	275
Work of International High Commission	120
Costa Rica, Legislation, Jurisprudence, Bibliography	146, 266
Counsel to Registrants under Selective Service Law	18
Cuba, Legislation, Jurisprudence, Bibliography	147, 266
Crowder, Provost Marshal General, Message from	547
Davis, John W., Solicitor General, Address by	83
Delegates from A. B. A. to Conference at Cleveland	302
Denmark, Legislation	193, 266
Ecuador, Legislation	266
Editorial Miscellany, Comparative Law Bureau	118
Editorial Staff, Comparative Law Bureau	274

702 *The American Bar Association Journal*

	PAGE
Egypt, Bibliography	266
Estabrook, Henry D., Notice of Death of	4
Europe, Legislation, Jurisprudence, Bibliography	162
Extradition of Persons of Unsound Mind, Uniform Act for	3
Finland, Legislation, Jurisprudence, Bibliography	203
Foreign Codes and Laws Translated into English	276
Foreign Legislation, Jurisprudence, Bibliography	123
France, General Bibliography	267
Gaylord Lee Clark, Assistant Secretary	302
General Bibliography	265
Georges Barbey, Lieutenant	302
Germany, Legislation, Jurisprudence, Bibliography	171, 267
Great Britain, Legislation, Jurisprudence, Bibliography	172
Greece, Bibliography	268
Gregory, Attorney General, Suggestions to Executive Committee ..	305
Guglielmotti, Gen. Emilio, Response to Address of Gen. Scriven ..	640
Headquarters Comparative Law Bureau	274
Heralds of a World Democracy—The English and American Revolutions	583
Higher Law, The, Address by James M. Beck	656
Holland, Legislation, Jurisprudence, Bibliography	179, 270
Honduras, Legislation, Jurisprudence, Bibliography	147, 268
Honorary Members, Election of	549
Hughes, Charles E., Address of	92
Hungary, General Bibliography	268
Iceland, General Bibliography	268
Insurance Law, Committee on	9
Insurance Law, Report of Committee on	323
Insurance, Model Code	325
International High Commission, Work of	120
International Law, Report of Committee on	388
International Private Law and Jurisprudence	111
Italy, General Bibliography	269
Italy, Our Ally; Her Great Part in the War	620
Italy's Share in this War, Reply of Major-General Emilio Gugliel- motti to Address of General Scriven	640
Japan, Legislation, Jurisprudence, Bibliography	258, 269
Japan, Safeguard of Civil Liberty in, Address by T. Miyaoka	604
Journal Exchange List (Foreign)	275
Judicial Recall, Committee on	12
Report of Committee on	400
Jurisprudence and Law Reform, Committee on	7
Report of Committee on	408
Las Siete Partidas	261
Latin America, Legislation, Jurisprudence, Bibliography	133

	PAGE
Legal Education, Council on.....	7
Report of	413
Legislative Drafting, Committee on.....	14
Report of Committee on.....	426
Liberty Loans, Address by John W. Davis, Solicitor General.....	83
Limited Partnership Act, Uniform.....	3
Manitoba, Legislation, Jurisprudence, Bibliography.....	129
Meetings of State Bar Associations.....	5, 80, 303, 550
Memorial for Appellate Courts.....	15
Message from Provost Marshal General.....	547
Mexican Revolution in Word and Deed.....	681
Mexico, General Bibliography.....	269
Miyaoka, Hon. Tsunejiro, Address by.....	604
Election to Honorary Membership.....	549
Notice Concerning	302
Morocco, General Bibliography.....	269
National Development, New Phases of, Address by Charles E. Hughes	92
Newfoundland, Legislation, Jurisprudence, Bibliography.....	132
New Phases of National Development, Address by Charles E. Hughes	92
Nicaragua, Legislation, Jurisprudence, Bibliography.....	148, 269
Norway, Legislation, Jurisprudence, Bibliography.....	195, 269
Notes on International Private Law and Jurisprudence.....	111
Noteworthy Changes in State Law, Committee on.....	11
Report of	433
Nova Scotia, Legislation, Jurisprudence, Bibliography.....	128
Obituary (Carl Goos)	119
Officers, American Bar Association, 1917-1918.....	297
Officers, American Bar Association, 1918-1919.....	535
Officers and Managers Comparative Law Bureau.....	274
Officers of Sections and Allied Bodies of A. B. A.....	297
Organization and Work of Comparative Law Bureau.....	273
Panama, Legislation, Jurisprudence, Bibliography.....	151, 270
Patent, Trade-Mark and Copyright Law, Committee on.....	8
Report of	471
Peru, Legislation, Jurisprudence, Bibliography.....	153
Philippines, Legislation, Jurisprudence, Bibliography.....	261
Portugal, General Bibliography	270
Portuguese Colonies, General Bibliography.....	270
Present Value of Comparative Jurisprudence.....	645
Prince Edward Island, Legislation, Jurisprudence, Bibliography.....	128
Professional Ethics, Committee on.....	11
Report of	480
Program, American Bar Association 1918 Meeting.....	277

704 *The American Bar Association Journal*

	PAGE
Publications of Comparative Law Bureau.....	275
Quebec, Legislation, Jurisprudence, Bibliography.....	127
Reception Committee, 1918.....	301
Referendum to Members Concerning Salaries of Judiciary.....	3
Remedies and Laws Relating to Procedure, Committee on.....	7
Report of Committee on.....	500
Reports and Digests, Committee on.....	8
Report of Committee on.....	513
Reports of Committees:	
Bureau of Comparative Law.....	317
Commerce, Trade and Commercial Law.....	319
Insurance Law	323
Model Insurance Code.....	325
International Law	388
Judicial Recall	400
Jurisprudence and Law Reform.....	408
Legal Education (Standard Rules).....	413
Legislative Drafting	426
Noteworthy Changes in Statute Law.....	433
Patent, Trade-Mark and Copyright Law.....	471
Professional Ethics	480
Remedies and Laws Relating to Procedure.....	500
Reports and Digests	513
Uniform Judicial Procedure.....	519
Uniform State Laws.....	527
Uniform Flag Act.....	529
War Service	532
Response of General Guglielmotti to Address of General George P. Scriven	640
Russia, Legislation, Jurisprudence, Bibliography.....	266
Safeguard of Civil Liberty in Japan, The.....	604
Salvador, Legislation, Jurisprudence, Bibliography	155, 270
Santo Domingo, Legislation, Jurisprudence, Bibliography.....	157
Sarachaga, Dr., Letter from.....	4
Saskatchewan, Legislation, Jurisprudence, Bibliography.....	129
Scandinavia, Legislation, Jurisprudence, Bibliography.....	193
Scriven, Gen. George P., Address of.....	620
Selective Service Law, Counsel to Registrants Under.....	18
Service, A call to, Address by John H. Clarke.....	567
Services of Notaries Public.....	303
Smith, Walter George, Address as President.....	551
Soldiers and Sailors Civil Relief Act.....	303
Solicitor General Davis, Address, "The Liberty Loans".....	83
Spain, Legislation, Jurisprudence, Bibliography	207, 270
Special Announcements	73

	PAGE
Special Article, Work of International High Commission	120
Special Committee on War Service, Report of	87, 532
Special Committees	12
Standing Committees	7
State Bar Associations, Meetings of	5, 80, 303, 550
Suggestions of Attorney General Gregory to Executive Committee	305
Sweden, Legislation, Jurisprudence, Bibliography	196, 270
Switzerland, Legislation, Jurisprudence, Bibliography	210, 270
The English and American Revolutions, Address by Hampton L. Carson	583
The Higher Law, Address by James M. Beck	656
The Mexican Revolution in Word and Deed	681
The Present Value of Comparative Jurisprudence	645
The Socialist Menace to Constitutional Government	54
The United States Law Journal of 1822	37
Uniform Flag Act	529
Uniform Judicial Procedure, Committee on	13
Report of	519
Uniform State Laws, Committee on	9
Report of	527
Uniform State Laws Recommended for Adoption	3, 529
Uruguay, Legislation, Jurisprudence, Bibliography	160, 270
Venezuela, Legislation, Jurisprudence, Bibliography	162, 271
War Service of the American Bar Association	87, 532
Work of the International High Commission	120
Yukon Territory, Legislation, Jurisprudence, Bibliography	132